2013.

SUPREME COURT OF THE UNITED STATES.

No. 69.

RUSSELL STURGESS, LIBELLANT AND APP'T,

vs.

JOHN CLOUGH, ROBERT L. MABEY, AND HENRY M. WEED, CLAIM'TS OF THE STEAMBOAT R. L. MABEY, HER TACKLE, &c.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificates	1	1
Libel	3	2
Stipulation for libellant's costs	10	4
Monition and marshal's return	11	5
Claim of Robert D. Mabey	14	7
Stipulations	16	8
Order of discharge of vessel	18	9
Answer of claimants	20	10
Replication to answer	27	12
Testimony of John McGinn	29	13
" Eugene H. Sullivan	30	14
" Samuel Candler	31	14
" Patrick McGinnis	31	14
" John Renaud	32	15
" William Francis	33	15
" Hamilton J. Gedney	33	15
" David Lampman	34	15
" William Sweeny	36	16
" John A. Boyle	38	17
" Robert Caldwell	38	17
" John M. Davis	38	17
" Richard Yates	30	17
" Richard F. Hoffman	39	17

GIDEON, Print.

	Original.	Print.
Testimony of John McGinn	41	18
" Samuel Candler	43	19
" Patrick McGinnis	45	19
" James Renard	46	20
" William Francis	51	21
" A. J. Endley	51	21
" David Lampman	52	22
" Frederick R. Anthony	61	25
" Isaac D. Briggs	69	27
" Reuben Coffin	78	31
" Samuel Brandoe	80	31
" Robert H. Colwell	81	31
" John A. Boyd	82	32
" John M. Davis	83	32
" Richard Yates	84	32
" Salters Hoffmire	85	33
" Albert C. Malcolm	88	34
" Richard R. Costar	89	34
" Isaac H. Hollinback	91	35
Statement alluded to in minutes	92	35
Bill of sale		38
Deposition of Eugene H. Sullivan	101	40
Decree of district court		45
Notice of appeal	115	45
Petition of appeal to circuit court	115	46
Appeal bond	120	47
Citation and service	122	49
Proceedings in circuit court—notice and affidavit	124	49
Order to amend apostles	131	51
Decree of circuit court	134	51
Petition of appeal	137	54
Appeal bond	142	55
Citation and service	144	56
Answer to petition of appeal		57
Stipulation of counsel		57

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this
[L. S.] thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this
[L. S.] 21st day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

GEO. F. BETTS, *Clerk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on the day of in the year of our Lord one thousand eight hundred and fifty-six—

Present: The Honorable Samuel R. Betts, district judge.

RUSSELL STURGIS, libt. and appellant,
vs.
THE STEAMBT. R. L. MAYBEY, her tackle, &c., appellees. } 12,239.

1854, November 14.—The libellant files his libel in the words and figures following, to wit: 1

[REC. LXIX, D. T., 1858.]—1

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Russel Sturgis, owner of the steamboat or steam-tug "Zachary Taylor," formerly "Hector,"
2 against the steamboat "R. L. Maybey," her engine, tackle, apparel, and furniture in a cause of collision, alleges as follows:

First. That this is an action founded upon a marine tort, and the said steamboat R. L. Mabey is now within the southern district of New York.

Second. That the libellant now is and was at the time hereinafter mentioned the owner of the said steamboat or steam-
3 tug "Zachary Taylor," otherwise called the Hector, her tackle, apparel, and furniture; that said steam-tug was engaged in the business of towing vessels for hire.

Third. That about o'clock in the noon of the eleventh day of August, 1854, said steam-tug "Zachary Taylor was lying stationary alongside of the brig Wanderer, between the bar and the light-ship outside of Sandy Hook, with her engine stopped.
4 While in that situation the steamer R. L. Mabey approached the said steamboat nearly head to head; that said R. L. Mabey was steered directly towards the bow of the said steam-tug Z. Taylor, while the latter lay stationary as aforesaid, and no attempt was made by any person on board the R. L. Mabey to alter her course, and she continued steering with full steam directly upon the bow of the Z. Taylor, until it was too late to stop her or to to avoid a collision; that the said R. L. Mabey struck the
5 steam-tug on the bow, and ran the entire length of her guards until stopped by the wheel of the Z. Taylor; that said steamboat R. L. Mabey, by said collision, broke every beam in her course through the Z. Taylor, to wit, thirteen beams, on the starboard side of the Z. Taylor, forward of the wheel-beam; that she also broke every outside knee on the Z. Taylor, starboard side forward of the wheel-beam, and two knees under the wheel-beam, and several of the hanging and sister knees on the inside of the Z. Taylor,
6 and also injured the deck of the latter very much, splitting the thick oak plank in the centre thereof, and straining the hull badly.

Fourth. That when the steamboat R. L. Mabey approached the Z. Taylor, the captain and pilot of the latter endeavored to back her, and rang the bell to back her, and several back revolutions were made by her engine before the collision took place; that every exertion in the power of the persons on the Z. Taylor was made to avoid said collision, but the R. L. Mabey came on with such speed and force that it was impossible to do so.

7 Fifth. That the said steamboat R. L. Mabey was not properly manned and equipped; that the pilot or person in charge

of her was incompetent to perform his duties; that when she approached near the steam-tug Z. Taylor, he left the pilot-house of the R. L. Mabey and ran aft, and kept himself out of the way until after the collision, and that no effort was made by the persons on board the R. L. Mabey to avoid said collision, and the same occurred solely through gross and inexcusable negligence on their part in not stopping said R. L. Mabey in time to avoid said collision, or in not avoiding the Z. Taylor by passing on 8
either side of her, and not through any negligence or fault on the part of the persons on the Z. Taylor.

Sixth. That the libellant has been compelled to pay large sums of money, amounting in all to sixteen hundred and thirteen (03.100) dollars, for repairing the injuries to said steam-tug Z. Taylor caused by said collision; that he has been deprived of the use and employment of said steam-tug in said towing business, and of the profits arising therefrom, for a long space of 9
time, to wit, for the period of fourteen days; that the profits which would have been derived from the use and employment of said steam-tug by the libellant during said fourteen days amount to the sum of ten hundred and fifty dollars.

Seventh. That by reason of the premises the libellant is entitled to claim of the said steamboat R. L. Mabey, the damages sustained by him by reason of said collision, to wit, the sum of sixteen hundred and thirteen dollars paid by libellant for actual repairs to said steamboat Z. Taylor, in consequence of the injuries 10
suffered by her from said collision; and the further sum of ten hundred and fifty dollars for the aforesaid detention and deprivation of the use and employment of said steam-tug during said fourteen days.

Eighth. That all and singular the premises are true and within the jurisdiction of the United States, and of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against the said steamboat R. L. Mabey, her engine, tackle, apparel and furniture, and that all persons 11
having or claiming to have any interest therein, may be cited to appear and answer upon oath as to all and singular the premises, and that this honorable court would decree payment to the libellant of his damages aforesaid, and that the said steamship R. L. Mabey may be condemned and sold to pay the said claim, with interest and costs, and that the libellant may have such other and further relief as he may be entitled to receive. 12

RUSSELL STURGIS.

Sworn to before me, November 13, 1854.

CHAS. ELIOTT SCOVILLE,
U. S. Com'r.

MARTIN & A. F. SMITH,
Proctors.

Endorsed: 12,239. U. S. district court.

RUSSELL STURGIS
ag't
STEAMBOAT R. L. MABEY,
her tackle, &c.

Copy libel.

MARTIN & A. F. SMITH,
Proctors.

Filed Nov. 14, 1854.

District Court of the United States for the southern district of New York.

Filed the 14th day of November, 1854.

Stipulation for Libellant's Costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the fourteenth day of November, in the year of our Lord one thousand eight hun-
13 dred and fifty-four, by Russell Sturgis against the steamboat R. L. Mabey, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat may be condemned and sold to pay the demand of the libellant; and the said libellant and Michael W. Devine, surety parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution
14 may issue against their goods, chattels and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and
15 shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

Taken and acknowledged this fourteenth day of November, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, ss.

Michael W. Devine, *part* to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

Sworn to this fourteenth day of November, 1854, before me.

U. S. Commissioner.

Recorded the 14 day of November, 1854.

G. W. M., *Clerk.*

Southern District of New York, ss.

[L. S.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States, for the southern district of New York, on the *fourtenth* day of November, in the year of our Lord one thousand eight hundred and fifty-four, by Russell Sturges against the steamboat R. L. Mabey, her tackle, &c., (claim $2,653—collison,) for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the fifth day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 14th day of November, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

GEO. W. MORTON, *Clerk.*

MARTIN & A. F. SMITH,
Proctor for Libellant.

In obedience to the within monition, I attached the steamboat R. L. Mabey, therein described, on the 18th day of

November, 1854, and have given due notice to all persons claiming the same, that this court will, on the 5th day of December inst., *inst.* (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ABM. T. HILLYER,
U. S. Marshal.

Dated 5 December, 1854.

Vol. 12, page 239.

Southern District of New York, United States district court.

RUSSELL STURGES
vs.
THE STEAMBOAT R. L. MABEY,
her tackle, &c.

Monition ret'ble Dec. 5, 1854.

MARTIN & A. F. SMITH,
Proctor for Libellant.

Filed December 5, 1854.

I hereby depute John Helm to execute the within process.
Dated 14th November, 1854.

ABM. T. HILLYER,
U. S. Marshal.

United States district court.

RUSSELL STURGISS
agt.
THE STEAMBOAT R. L. MABEY,
her tackle, &c.

We hereby consent that John Clough, Robert L. Maybe, and Edwin R. Kirk, be accepted and received as sureties in the bond given on the discharge of the steamboat R. L. Mabey from the custody of the United States marshal, for the southern district of New York.

Dated November 25, 1854.

MARTIN & A. F. SHITH,
Pro. for Libell't.

Endorsed: 12,239. U. S. district court. Russell Sturgis vs. the steamboat R. L. Mabey.

22 *Consent filed Nov.* 25, 1854.

At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Saturday, the twenty-fifty day of November, in the year of our Lord one thousand eight hundred and fifty-four—

2017

Present: The Hon. Chas. A. Ingersoll, dist. judge.

THE STEAMBOAT R. L. MABEY
asm.
RUSSELL STURGIS.

And now, Robert L. Mabey intervening for the interest of himself and the other owners, appears before the honor- 23
able court and makes claim to the said steamboat, her tackle, apparel, and furniture, as the same are attached by the marshal, under process of this court, at the instance of Russell Sturgis, and the said Robert L. Mabey avers that he was in possession of the said steamboat at the time of the attachment thereof, and the persons above named are the true and bona fide owners of the said steamboat, and that no other person is the owner thereof; wherefore, he prays to defend accordingly.

Sworn to and subscribed this 25th day of March, A. D. 1854, before me. 24

GEO. W. MORTON, *U. S. C.*
JOHN J. VAN VLECK,
Proc. for claimant.

Endorsed: Vol. 12, Nos. 239. U. S. dist. court, south. dist. of New York. The steamboat R. L. Mabey asm. Russell Sturges.
JOHN VAN VLECK,
Proc. for claimant.

Claim of Robert L. Mabey, filed twenty-fifth day of November, 1854.

Respondent's costs.

District Court of the United States for the southern district of New York.

Filed the 24th day of November, 1854.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the fourteenth day of November, in the year of our Lord one thousand eight 25
hundred and fifty-four, by Russell Sturgis against the steamboat R. L. Mabey, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that process in rem issue against the said steamboat; and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim is about to be filed in said 26
cause by Robert L. Mabey and others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be

and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

ROBERT L. MABEY,
EDWIN R. KIRK,
JOHN CLOUGH.

27 Taken and acknowledged this 24th day of November, 1854, before me.

GEORGE W. MORTON,
U. S. Commissioner.

Southern District of New York, ss.

Edwin R. Kirk, Robert L. Mabey, and John Clough, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York; that he is worth the
28 sum of five hundred dollars, over and above all his just debts and liabilities.

Sworn to this 24th day of November, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 25th Nov'r, 1854.

G. W. M., *Cl'k.*

District Court of the United States for the southern district of New York.

In Admiralty.

Filed the 24th day of November, 1854.

Stipulation entered into pursuant to the rules and practice of this court.

29 Whereas a libel was filed on the fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-four, by Russell Sturgis against the steamboat R. L. Mabey, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamboat is in the
30 custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctors for the libellant, it has been agreed to discharge the said steamboat from custody, on the claimants' executing stipulations for costs and value, the latter in the sum of $2,600, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their surety, execu-
31 tion for the above amount may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such, that if the stipulators (undersigned) shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree, to John Van Vleck, esquire, proctor for the claimant of said steamboat, abide by and pay the money awarded by the final decree rendered by the 32
court or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

ROBERT L. MABEY,
EDWIN R. KIRK,
JOHN CLOUGH.

Taken and acknowledged this 24th day of November, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, ss.

Edwin R. Kirk, John Clough, Henry M. Weed, and Robert L. Mabey, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars, over and above all his just 33
debts and liabilities.

EDWIN R. KIRK,
JOHN CLOUGH,
ROBERT L. MABEY.

Sworn to this 24th day of November, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 25 day of November, 1854.

G. W. M., *Clk.*

At a stated term of the district court of the United States of America, for the southern district of New York, held at the city hall, in the city of New York, on Saturday, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-four; present, the Honorable Chas. A. Ingersoll, district judge.

THE STEAMBOAT R. L. MABEY, her tackle, &c., } 34
asm.
RUSSEL STURGIS.

On filing consent to stipulate, and the terms being complied with, on motion of John Van Vleck, esq., proctor for the claimants, it is ordered that the vessel be discharged from custody.

Endorsed: Vol. 12, No. 239. U. S. dist. court, southern dist. of New York. The steamboat R. L. Mabey asm. Russel Sturgis.

35 J. VAN VLECK,
Proct. for Cl'mt.

Order to discharge, filed 25th November, 1854.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the city hall, in the city of New York, on Tuesday, the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-four; present, the Hon. Hall & Ingersoll, district judges.

RUSSEL STURGIS vs. THE STEAMBOAT R. L. MABEY, her tackle, &c. } MARTIN & A. F. SMITH. 12, 239. WM. J. HASKETT.

The marshal returns on the monition issued in the above entitled cause, that he had attached the steamboat R. L. Mabey, her tackle, &c. On motion of Wm. J. Haskett, esq., proctor for the claimants, it is ordered that they have 20 days to perfect
36 and file their answer.

In Admiralty.

United States District Court, southern district of New York.

RUSSEL STURGIS against THE STEAMBOAT R. L. MABEY.

The answer of John Clough, Robert L. Mabey, and Henry M. Weed, owners and claimants of the steamboat R. L. Mabey, respectfully showeth:

37 Firstly. They admit the allegations firstly propounded in the libellant's libel.

2ndly. They have no knowledge sufficient to form a belief of the libellant's being the owner of the steamboat Zachary Taylor, otherwise Hector, as propounded by the libellant. They leave him to his proof of the same on the trial of this cause.

38 Thirdly. They deny, from information received from their hands and employees of their said steamboat, which they believe to be true, the facts set forth in the third allegation of the libel, and they say that the same is untruly stated therein, and they say, on like information, which they believe to be true, that the facts of such collision are as follows:

That on the day of the collision, as stated in the libel, the steamboat R. L. Mabey, which was a steam-tug engaged in towing vessels, like the steamboat Z. Taylor, was in the lower bay looking out for an opportunity to tow a vessel, and was heading in a south-

east course, going at a very slow rate, the wind heading from the north, she observed a brig, whose name is unknown to the claimants, bound in a northwest course, and in a course 39
usual for vessels entering the harbor of New York. When those in charge of the steamboat Mabey first observed the brig, the said steam-tug was at or nearly stationary, looking out for a tow. She then started on a course E. SE., which would bring her in the wake of the brig in a short time, thinking the brig needed a tug to tow her in. At or about the same time the 40
steam-tug Z. Taylor, otherwise Hector, was a mile or so E. NE. of the brig, heading a W. SW. course; those on the Z. Taylor also observed the brig, and supposed she needed a tug, and commenced to near the brig, with the intention of offering the services of the Z. Taylor. The courses of the two steam-tugs were such as would bring them together on *paralell* lines to each other, the result of which would be that the two vessels would pass each other; and by the rule of the admiralty and the statute of the State of New York, each vessel should go to the right, 41
and it was the duty and the right of the Mabey to keep to the right on the E. SE. course, and of the Z. Taylor likewise to keep to the right on the W. SW. course, and they thus would pass each other on the larboard hand. When the two vessels approached the brig they neared it at about the same moment; probably the Mabey arrived near the brig the first, keeping to the right and observing the Z. Taylor nearing her rapidly; slacked 42
her speed, slowed, and stopped, and got her engine reversed; at that instant the Z. Taylor neared the Mabey under her usual speed, not having stopped her engine, and while both boats were thus in *paralell* courses she attempted, contrary to the maritime law and the statute aforesaid, to cross the bow of 43
the Mabey, pas the bows of the Mabey, and pass the Mabey on the starboard hand instead of the larboard; in executing that *manouevre*, with the covetous design of getting the right to tow the brig, she ran against the Mabey obliquely, who was also under some momentum, but with her engine reversed and backing, but nevertheless nearly stem on.

Fourthly. These claimants, on like information from the 44
hands and employees of their vessel, which they believe to be true, deny the allegation fourthly propounded in the libel, and say that the Z. Taylor's speed was not abated in the least, but she came head on to the Mabey with her full speed.

Fifthly. These claimants, on like information from the hands and employees of their vessel, which they believe to be true, deny the facts fifthly propounded in the libel, but on the 45
contrary do say that the said steam-tug, R. L. Mabey, was a good and staunch vessel, admirably equipped and provided with men and officers, tackle, apparel, and furniture; and they also say

that the Z. Taylor was not seaworthy, was an old hulk, and as such was known for many years in the harbor of New York; that the collision occurred through the negligence and incompe-
46 tency of those navigating the said Z. Taylor in various ways, and more particularly in executing the improper and unseamanlike manœuvre aforesaid.

Sixthly. These claimants deny the matters severally propounded in the sixth and seventh allegations of the libel, and they say that whatever injury occurred to the Z. Taylor arose from her unseaworthy condition. The paint on the guards of the R. L. Mabey
47 was hardly effaced or injured by the collision, whereas there was left on her stem and bows a quantity of decayed and rotten timber, composing portions of the guards of the Z. Taylor; that the Z. Taylor did not lay up immediately after the collision, but made various trips about the harbor of New York for the space of a week or two, and then was laid up by her owners, who
48 gave her a thorough overhauling and repair, which she needed very much before the collision, and now seek to charge upon the claimants the expenses of such overhauling; that the whole expense of repairing the part damaged, in case she was in a seaworthy condition, would not have been over $200, and two days' detention, which would not have exceeded $70, making in all $270.

Fourthly. The claimants admit jurisdiction of this court,
49 but deny the truth of the matters alleged in the libel. They pray, therefore, that said libel be dismissed with costs.

D. McMAHON,
Proc. Claimants.
E. J. PORTER, *Advocate.*
JOHN CLOUGH.

Sworn to before me, this 16 day of January, A. D. 1855.

J. W. NELSON,
U. S. Com.

Endorsed: 12,239. In admiralty. United States district
50 court, S. D. of New York. Russell Sturgis vs. Steam-tug R. L. Maybey. Answer.

D. McMAHON,
Proct. Clm't.

Filed January 16, 1855.

1855, March 2d. The libellant files his replication in the words and figures following, to wit:

In Admiralty.

51 The replication of Russel Sturges, libellant, to the answer of John Clough, Robert L. Maybey, and Henry M. Weed, owners and claimants of the steamboat R. L. Mabey, respondents.

52. This repliant, saving and reserving to himself now and

at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says, that he will aver, maintain, and prove his libel and complaint to be true, certain, sufficient in the law to be answered unto, and that the said answer of the said John Clough, Robert L. Mabey, and Henry M. Weed, is uncertain, untrue, and insufficient to be replied unto by this repliant without that, that any 53
other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said libel and complaint he has already prayed.

MARTIN & A. F. SMITH,
Proctors for Libellant.

Endorsed: U. S. district court. Russel Sturgis, agt. the 54
steamboat R. L. Mabey, her tackle, &c.

Replication.

MARTIN & A. F. SMITH,
For Libellant.
AUGUSTUS F. SMITH,
Advocate.

Filed March 2d, 1855.

At a stated term of the district court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six. Present, the Honorable Samuel R. Betts, district judge.

Collision off the Hook.

Russel Sturgis, owner of tug Zachariah Taylor or Hector, vs. The steamboat R. L. Mabey, John Clough and oth's, clm'ts.	MARTIN & SMITHS, for libell'ts. D. McMahon, for clm't.

This case being called in its order on the calendar, ordered 55
hearing. Mr. Donohue reads the libel. Mr. McMahon reads the answer.

John McGinn, Sandy Hook Pilot.

John McGinn sworn: Pilot, Sandy Hook, 30 years or more; is familiar with the manner in which vessels takes tows coming in

or going out. Steamer goes round so as to head same way
56 as sailing vessel; not proper course or safe for tug to come up heading opposite direction to tow; general usage is to get on quarter of tow and from that to weather bow.

Cross-examined.

A vessel keeping the channel coming in would head W. NW.: main swash channel heads NW. and SE. If a vessel is going up main ship channel, and tug is coming down swash channel, the general custom is for tug to go round tow and come alongside of her; sees it done repeatedly, and every day; it would make no difference if tide was half flood and wind S. and E.; tide and wind would not alter the rule.

E. H. Sullivan's dep'n read.

57 Eugene H. Sullivan (deposition read, see page 40) also sworn.

When witness was speaking to Hector from Wanderer, about ½ length of Hector was lapped on the brig, and about twenty feet space between her and brig.

Cross-examined.

That was on starboard side.

Re-direct.

It is custom for tug to round to under stern of tow, and come up one side or the other.

58 Re-cross-examined.

Not material which side tug comes up.

To court. Wind was about south.

S. Candler surveyed vessel.

Samuel Candler sworn: Marine surveyor; 13 or 14 years in N. Y.; previously was mariner and shipmaster. Witness surveyed Hector for damages in August, 1854, (gives character of damages,) she received blow on starboard side, forward of wheel; glancing
59 blow; 13 beams broken forward of guard, and part of guard or starboard side, &c.; tug appeared sound, but not a new vessel.

P. McGinness.

Patrick McGinness sworn: Ship carpenter; saw injury of tug; it was on starboard side; injury commenced about 10 feet from bow and reached to guard beam.

Cross-examined.

Examined her day after collision in August, 1854; was told

(him) she was hurt day before; knows of no trips of hers after that about the harbor; witness repaired damages immediately.

John Renaud, engineer.

John Renaud, sworn: Engineer; was engineer of tug Hector at time of collision; was alongside of brig on her starboard side; engine had been stopped 2 or 3 minutes; witness stopped it; (produces description of vessel made by himself;) bells rang to back just before collision; gave 2 or 3 turns; a bell rang to stop; went on deck and found tug keeled over by collision; engine of Mabey did not stop; had then been 18 months in tug; left her about month after she was repaired; always accustomed to round to and come alongside of tow, heading in same direction. 60 61

Cross-examined.

First came wholly out of his fire-room, when bows of Mabey were in Hector; first began to notice Mabey after Hector got alongside of tow; Mabey then ½ or ¾ mile off; she came up in 3 or 4 minutes; Hector was then heading same way with brig.

William Francis, sworn: Have *command* Hector; custom of tugs in coming to tows is to approach them and round to, and head up, whether coming down ahead or approaching a beam; not proper or safe to come up in any other manner. 62

Cross-examined.

General use is to come up on weather quarter, but do either when they find captain or pilot stationed.

Hamilton J. Gedney, sworn: Mariner master of tug-boat for seven years; custom is to round to a tow, not to run at them, and get in direction of vessel; when brought into same direction, generally come on weather quarter. 63

Cross-examined.

Tug coming down would generally round to on lee of tow and come round on weather quarter.

For defence.

David Lampman, sworn: Was master of Mabey; she was harbor-tug, and to Sandy Hook; Fred'k Anthony was pilot; we ran about S. SE. shore; about N. NW. tide flood, over ½ in its strength; about 2 knots ran towards brig till near her, and then stopped engine; brig approached Mabey, and then kept coming on till Mabey was about at jibboom of brig; and Hector pressed up run her jibboom across deck of brig; and Hector did not stop her engine until she came in collision; she hit bow of Mabey and swung it around, head on to brig, instead of being alongside of her; bell rung on Hector to slow and back just as two came together; engine of Hector had 64 65

been reversed and worked back 3 or 4 times; judges Hector was 3 or 4 times her own length from Mabey when bells of latter rang to slow and stop; cannot tell difference of distance of two tugs from brig when we started for her, nor relative speed of boats; bearing of brig was directly towards Mabey, and Hector was away
66 up stern a little off her starboard quarter; was not preparing Mabey to round to; proceeded as if only to speak to brig; been 27 years on water; been pilot and master of different vessels (sailing vessels) and steamers; no hail between tugs; when Hector stopped it was for Mabey and not for brig; Hector not near enough to brig to hail her before collision; Hector could have
67 avoided collision by porting her helm a little or by stopping before getting to brig; Mabey had not got to southward to brig; Hector would have cleared Mabey by porting her helm hard up, her length off; Mabey had not room to port much, as she was too near jibboom of brig; saw Hector down by Hook several times doing jobs, after the collision and before her repairs. (See notes of counsel of test'y, page .) This was first of his tugging about harbor.

Wednesday, Oct. 22, continued.

68 William Ten Eyck, sworn: Engineer of Mabey. (Examined at large.)

Frederick R. Anthony, sworn: Pilot of Mabey; (examined at large;) Mabey reached brig first.

Isaac B. Graves, sworn: Custom-house clerk; proves record of bill Dec. 14, 1855, of sale of vessel to John Clough.

Albert Walsh, sworn: On Mabey at time of collision. (Examined at large.)

William Sweeney, sworn: Was hired pilot on board Hec-
69 tor; (examined at large;) hardly lapped brig when collision took place; bow of Hector might be even with stern of brig Mabey; was alongside of brig; both vessels got there together; Hector was right under stern at time of collision; had not spoken brig until after collision; does not think collision would have
70 taken place if Hector had ported her helm when wit. told captain they would come together; hull of Hector not broken; she at no time had got up to starboard bow of brig; just as coming together heard a hail to them from Mabey.

Capt. Reuben Coffin, sworn: In tow-boat business; waterman 24 yrs. or so; has last four years towed outside Hook; examined at large; knows no general custom of approaching a tow.

71 Capt. Hiram Wheeler, sworn: Commanded tugs 3 years around Sandy Hook. (Evi. taken by counsel.)

Samuel Brandoe, sworn: Engineer. (Test'y taken by counsel.)

John S. Ray, sworn: Master of tugs. (See counsel's minutes.)

2022

For Libellant.

Robt. H. Caldwell, sworn: Foreman on Hector at time of collision. (See counsel's minutes.) Lapped quarter of brig at time of collision; had stopped and spoke her before the collision, as much as 4 or 5 minutes before Mabey came up.

Thursday, Oct. 23, cont'd.

John A. Boyle, sworn: Custom-house enrolling clerk; 72
produces record of bill of sale 23d Oct., 1856; recorded; believes it had been on file previously, probably a year; there was some informality which prevented its being recorded sooner; (see atty's notes;) David Lampman to John Clough; bill of sale Nov. 13, 1854.

Robert Caldwell, (again:) The pilot and others on deck of Mabey ran aft as vessels came together; just as vessels were 73
about striking together, master of Hector spoke to master of brig after collision; don't know what was said; Mabey's wheel made one turn back after striking, and then stopped.

John M. Davis, sworn: Cook on Hector; was at collision; went forward after it; Mabey's stern was in broadside of Hector's.

Cross-examined.

It was between 9 and 12; was getting dinner ready; 74

Richard Yates, sworn: (attorney's notes:) As to the propriety of meeting on starboard side, tug in pursuit in wake is entitled to the tow; rule of navigation is to give priority to tug following in wake of tow. (States rule of taking tows.)

Richard F. Hoffman, sworn: (Attorney's notes,) substantially as last wit.

Richard Brown, sworn: Pilot. (See att'y's notes.)

Walsh, again: M. Reed, in court, is one of the part owners 75
of the Mabey.

Albert C. Malcolm, sworn: Sandy Hook pilot 12 years.

Richard R. Caster, sworn: Do. 30 years.

John Flemming, sworn: Wood-work of Hector was sound 76
after the collision, i. e., beams and knees.

Hallenbeck, sworn: Formerly partner of Clough; knows Clough was in possession of vessel, and claimed her as owner.

Mr. Donohue argues for libellant. Mr. March for claimant.

Cur ad vult. 77

Notes of counsel referred to in judge's minutes, which with the judge's minutes are consented to be the case under the order of April 7, 1857—post p. 50.

U. S. district court.

Sturgis agt. the Robt. L. Mabey.

Before Judge Betts. Donohue for libts.; McMahon for respts. Oct. 21st, 1856.

Donohue reads libel. McMahon reads answer.

78 John McGinn, for libln't: Pilot, Sandy Hook, 30 years; man and boy keep station-boat at Hook; am familiar with the manner of tow-boats approaching and speaking vessels; the general mode is go round them, take a position so as to head the same way as the vessel; they round to either to windward or lee-
79 ward, so as to head the same way as vessel; it is neither proper nor safe to head at a vessel; the proper place is to get on the quarter of the vessel.

Cross-examined.

I am stationed at S. Hook; have seen tugs approach vessels differently, but very ignorantly; vessel coming in main ship
80 would head west N. west; if obliged to keep channel, a vessel going out main swash channel runs northwest and southeast.

Q. Is there any custom as to mode tugs and vessels should approach each other coming in main ship channel and tug going out?

A. There is a general custom to pass under the vessel's lee, and take a position on her weather quarter; it is an every-day occurrence; seen it done half dozen times a day.

81 Q. If tide have flood and wind south by east, does it make any difference?

A. Don't see any difference; tide and wind wouldn't alter position of affairs.

Q. If tug proceed northeast and vessel northwest?

A. Same rule applies to insure safety to vessel and tug.

Re-direct.

82 The tug meeting a vessel takes a sweep around to get her head the other way; in order to take it, she must give the vessel a berth.

Deposition of Eugene H. Sullivan read.

Eugene H. Sullivan recalled for Libellant.

Q. At the time of speaking to Hector, what was the position of the Hector?

A. One half of Hector's length was lapped on to the brig.

Q. What was space between brig and Hector?

83 A. Not over twenty feet.

Cross-examined.

She lapped on to the starboard side of the brig.

Re-direct.

I am a pilot; it is a custom for tugs meeting vessels to round to under the vessel's stern, and come up on one side or another to speak them; they don't run at a vessel.

Cross-examined.

Not material which side you round to on. 84

Judge. The wind was to the southward.

Samuel Candler for libellant: Marine surveyor for 14 years—before that, mariner; *survey* damages; made survey on the Hector in August, 1854; large numbers of beams and knees were broken; great deal damage done; blow was on the starboard side, forward of wheel; 13 beams were broken forward of the guard-beam; part of the guard on the starboard side the lodging knees 85 were broken; thirteen hanging knees on the starboard side were broken inside hull; sea hanging knees, and twelve lodging knees inside were carried away; deck beams, don't recollect size of; they had been bolted in previously; they were broken, not taken out.

Cross-examined.

Shown survey; have known the Hector as tow-boat; don't know her various names; didn't know her state and condition; could judge as to her condition before the collision by her 86 appearance. Afterwards I made many surveys; I recollect her condition perfectly, aside from paper—she was terribly wrecked; some knees were under her guard; found things broken in her hull.

Re-direct.

These are things connected with the breach; she appeared to be a sound vessel, *tho* not new; they were sound knees 87 and timber.

Cross-examined.

I gave the certificate a few days after I surveyed her.

Patrick McGinniss, for libellant: Ship carpenter; knows Hector; saw her after the injury; injured on her starboard side; injury commenced about ten feet from bow, extended to wheel beam; on its way took away 13 whole beams and some half beams.

Q. What size beams?

A. 7 inches by 8 of yellow pine, perfectly sound; knees 88 were sound; 31 knees inside and outside.

Cross-examined.

I am ship-carpenter; looked at her morning after collision, in August, 1854; I was sent for by Capt. Sturgis and capt. of the Hector; I only know that from report she made no trips about the harbor after I had examined her that I know of; I had known her

year and half and 2 years; knew she had name of Z. Taylor; didn't know she was condemned by U. S. government; I went to see damages and repair them soon as possible; went to work
89 at her right off; she made no trips while we were at work in her; we didn't knock off.

James Renard, for libellant: I was engineer of the Hector; am now on Golden Gate; in August, 1854, was on Hector; remember day of collision; was engineer; recollect fact of collision. Prior to the collision we were on the starboard side alongside brig; we were under a little headway; our engine was stopped; it had
90 been stopped 2 or 3 minutes before collision; at time of collision we were talking to the capt. or pilot of brig. Being shown diagram: I made this; that represents position; could not be any *niar* than that; I stopped the engine; we were then steering same way as the brig; after stopping I stood astraddle at the door of the engine-room; saw the Maybie; she was about ¾ mile
91 off when I first saw her; this was after I stopped the engine, and when we were getting alongside the brig, our nearest side was 10 or 15 feet from the brig; the Mabey came pretty fast; the Mabie did not stop her engine before she struck; our bell rang to back; I backed; she gave 2 or 3 turns back; jumped out of engine-room; our boat then on her beam ends; as I left the engine-room, told fireman to stand by the starting bar; I got
92 on deck; asked why they didn't back their boat off; she kept crowding on to us; their engine was backed off; a few minutes after I sung out. They broke several beams for 20 ft. inside and out; McGinness repaired the damages; when I looked out, saw no one on her forward deck; saw no one in her pilot-house; was 18 months in the Hector; little over 3 years since I left the
93 Hector; we always rounded to and came up alongside of vessel one side or another; we always *heard* the same way when we came alongside.

Cross-examined.

I went on Stonington line after I left J. Bell; 2*d* engineer of Vanderbilt; chief engineer of J. Bell; had been six weeks on her; left her because I got more money; before that I was engineer; never had been a pilot; I stood astraddle of the engine-room door to look at the Mabey; the first time I came out altogether;
94 after she struck I attended to the Mabey; when my engine was stopped I began my attention to the Mabey; when we stopped our boat alongside of the brig, it was on the starboard side of the brig; the Mabey was then ½ to ¾ mile off; she came it in 3 or 4 minutes; we were heading the same way as brig; when I first attended to Mabey, the Mabey would fetch to our bow or to brig's quarter head on; our vessel had a little sliding headway after her engine stopped. First I saw the Mabey when we started

to run for the brig; I was in the engine-room, called out by the captain; asked me if we could get brig first; told 95
him we could; Mabey was heading down on to the brig, and were from ½ to ¾ miles from the brig, and the Mabey was two miles from the brig. At that time we headed for the brig's stern, a little to starboard, on the same tack; when the captain asked me, I shook her up, and let her go along. The capt. said there the Mabey was We wanted to get there first if we could; I suppose she was going for the brig; started my fire up; I was going 7 or 8 miles an hour up to the brig; started our fires up; our bell rang to slow and stop; when we got near the brig, 2 bells were rung, one to slow and one to stop a minute or so between each bell; no other bell till we rung to back; that was just before she struck; she was about her length off then; there was no change of course of our vessel, after the captain asked; no change in the Mabey's course, as I see our bow was up to the brig's stern when the bells to slow and stop were rung, so that 97
we slid up alongside; I attended to the bells myself; some of the deck hands were forward on the Mabey; did'nt notice any one forward on our vessel. The Hector is 180 to 190 feet long; the engine-room pretty well forwards; the side house small; I had a clear view ahead; after she struck we navigated back to New York; we did one job afterwards, before we were repaired; attended steamer; put rough boards on the Hector; commenced work 3 or 4 days after the collision. Hector answers 98
her engine very well; can stop her twice her own length.

Re-direct.

The Mabey was twice as far off as we when we started for the brig.

William Francis: I have charge of the Hector now; the custom for tugs meeting a vessel is to round to and get on one quarter or another, generally on the weather quarter, and 99
to head the same way as the vessel; not proper to approach in any other direction.

Cross-examined.

When going the same way as the vessel we come up on quarter; it is customary to come up on weather quarter, that is, the side on which wind strikes.

Q. Suppose two tugs approaching the vessel at the same time, one in her wake and one on her bow, what is proper course for the bow tug?

A. Haul off and clear her on one side or another; either 100
side proper if he could clear her.

H. J. Endey: Steam-tug captain for seven years; when approaching a vessel we round to to speak her; I always round to

and get in direction the vessel is going; generally we come on the weather quarter when we are going same way as vessel.

Cross-examined.

101 The proper course is to keep off one side or another so long as kept clear; we round to under her lee and come up on her weather quarter; it is always customary to round to. I am not in Sturgis's employ.—[Libellants rest.]

David Lampman: Captain of Robert L. Mabey; steamer in towing business round harbor and to Sandy Hook; I was in command of the Mabey at the time of collision; Fred. Anthony was pilot; Mr. Walsh was on forward deck; I was there and
102 another man; our course was south-southeast; Hector was running in about north-northwest; the Wanderer was heading north-northwest; tide ½ flood, a little over; it runs 2 miles an hour at the place of collision. We went down to the brig till we came pretty near; when our engine stopped the Hecor came
103 on, the brig coming towards us, and Hector kept coming on; we were about at the flying jibboom; our engine was reversed; the Hector coming on till he crossed the Mabey's bow; Hector's engine never stopped till she came in collision with Mabey; her hitting our bow carried it right round; her bells rang about the time we *cam* together; our boat reversed; we made 3 or 4 turns back certain; we were 100 feet keel; I believe Hector was three or four of her own lengths off, when our bells were rung to slow, stop, and back; I heard a bell rung on the Hector,
104 first about time of collision; when we started for the brig we were 3 or 4 miles from Sandy Hook, where we met the brig a little northwest of the light-ship, brig heading for the main ship channel; I think I couldn't say which tug was nearest when they began to run for the brig. The Mabey is the fastest boat; I shouldn't think there was much difference either way be-
105 tween the distance of the tugs from the brig. The Hector was coming up in the brig's stern off her starboard side in her wake; we were not preparing to round to; we were going to speak to her; I followed the water 27 years as pilot and master; I always considered custom regulated by circumstances; if we wanted to tow her, it is customary to run direct for a vessel when we want to speak her; I did not see any one in the forward
106 deck of the Hector; there was no hail from the Hector; the Hector stopped her engine not far from the brig; there was no hail from our vessel before we stopped; in the act of collision they were thinking of something else besides hailing.

Judge. I suppose the Hector was running up for a tow.

We not being able to go to the right, I thought the Hector might go on the other side. The Hector might avoid *collison* by
107 porting her helm; she might have stopped before she got there; we had not got to the southward of the brig; at any

time the Hector might have gone to the southward of the brig; we might as well not go at all as go to the weather side; we didn't know the intention of the Hector, whether she meant to run into us; I thought the Hector would go to the west of us; I couldn't tell you what her course would be; had not any supposition as to what side she was going on; I think my pilot did not leave the pilot-house before the collision; before the collision, just 108
at the time we rung to slow, I told him to back; he was then at his post; I can't say who was at the Hector's wheel; I think it was Captain Woodward; I saw Sweeny after the collision, not when they were coming together; they could have avoided it by parting at a length off the brig; the Mabey was within 109
25 or 40 feet of the jibboom of the brig. (Shown diagram.) If the Mabey had headway, she must have gone into the Hector's hull. I have known the Hector in 1837 as the New Brighton; she had been running and laid up; then after that she was D. C. Pell, Hector, and Z. Taylor; I understood she was in the government employ. After the collison there was half a bushel or a bushel of rotten musty wood; the Hector's guard went over 110
the Mabey's bow; there was a rod, I think, running from the gallows frame to support the beams; I think her guards were narrowed to go to California; after her guards were built out they were supported by beams; I saw the Hector down there for a week; two or three times after the collision and before, she was repaired, I think.

Cross-examined.

When I first saw the Hector, I thought she was lying still; she was to the eastward and north of the brig; when 111
I first saw the Hector she bore east and north of the brig, I should judge when she started for the brig; I don't know how she headed; we bore N. NW. from the brig; our course was S. SE.; we were running right down at the brig; we did not change our course until the collision; we were to the northward a little bit of the brig; we were three lengths from the brig; when 112
we rung to slow, we were then nearly ahead on her starboard bow; if we had kept on we would have gone 30 or 40 feet off from the brig; when the Hector headed the same as the brig, she was two hundred yards off from the brig; can't say I saw her head to westward; before the collision, she was heading a little north NE. of brig's course on the starboard side; I supposed the Hector was running for the brig to tow; at this time I had been 113
since May or June in the towing business round the harbor; that was first of my tugging around the harbor; never tugged outside; the Maybie was more for inside than outside towing; she was a light small boat; I didn't make this diagram; I was reading when my attention was called to the brig by Walsh; he was an

emigrant agent; he employed her; she was not then in his employ; our intention was to get ahead of the Hector; we were not attempting to cut off the Hector. The brig bore S. south-
114 east from us when I first saw her; the Hector bore more east of us; she lay a little to the north and east of the brig's track. The only order I gave the pilot was to back; when I ordered the pilot to stop, I don't think I apprehended danger; the brig was going five miles an hour; a snug little breeze from the southeast, pretty well to eastward.

Re-direct.

115 I had command of steamboat six years before this.

Cross-examined.

I was towing from Piermont to New York.

October 22.

William Tenyke, for claimants: Engineer; heard and felt the blow; 4 bells, rung on the Mabie to slow and stop and back; when the bells rang we reversed the engine—reversed before the
116 blow; we had made between 4 and 5 turns back; we could stop her in five turns; we don't vary much from that; the Maybie could go 13 or 14 miles an hour; have been engineer 25 years.

Cross-examined.

I don't own her; I did own part of Mabey; I parted with my interest last winter to Mr. Clough; I am not still on her; I
117 am in the propeller Edward Mason; she belongs to Johnson & Co.; my interest on the Mabey continued up to last winter, in January, 1855; I still owned part of the Mabie; I had never parted with my interest up to that time; Captain Lampman owned a part of the Maybe; he left her about a year ago, or fourteen months; he owned part of her up to the time he left;
118 in accounting he was owner; I owned one-sixteenth of the boat; I could not say how much he owned; I guess he is not in any boat now; my engine worked with a tell-tale; I had generally worked with a hook; I don't recollect running into a brig; I do not recollect whether I made mistakes in using a tell-tale. I had never been in a boat towing outside; I knew we were going after brig; started to get the brig; did't know that the Hec-
119 tor was coming to get the job; I hadn't seen the Hector before we started for the brig; could't say; I did not come out of the engine-room till after the boats came together; my action was to stop and reverse; there was no pause between.

Re-direct.

I sold my one-sixteenth part to Mr. Clough, one of the claim-

ants; I sold it to him over a year after the collision, this last January; agreement was in writing; it is in Kinderhook.

Q. State its contents. Obj. to excluded.

Frederick K. Anthony, pilot of the Mabey at the time of the collision; was a licensed pilot at the time of the collision on board the Mabey; the brig was coming in from the south 120
and east, towards the bar, heading about north N. west towards the brig; the Hector was coming in from the eastward; we meant to speak the brig; she had passengers on board; the Mabey arrived at the brig first; just before we got abreast the brig's boom, we rang to slow the boat; we ran to starboard, 121
then about abreast of her; we rung to back immediately afterwards; the engine was reversed, I couldn't say how many times afterwards, should think 4 or 5. The Hector was three lengths of us off when we rung the bell to slow; after we rang to slow we were close into the brig; we were headed south S. east, and she north N. west on starboard side to starboard side. My intention was to go close to the brig's stern, hail, and see if Walsh wanted to tow them up ; I supposed the Hector would go on the other quarter, or else steer outside of me.

Judge. The Hector was three lengths off when we rang 122
to stop.

Re-direct.

The Hector did not stop till she was nearly up to us; I did not see her engine reversed; her wheels were going ahead until she got within about 20 feet of us. We came together, struck the Hector about 10 feet from her stern, on the starboard side, in bluff of her guards; I saw the boats coming together, and backed; I sung out to pilot of Hector; the Hector's engine stopped shortly before she hit us; at the time we came together we 123
were twenty feet off the brig's quarter; the Mabey was turned by the Hector's way head at the vessel; I left the pilot-house to tell the engineer to back her strong; the two vessels were then about ten feet apart; had rung to back before that time. Before the collision my wheel was put hard a starboard; didn't heave to starboard till the collision was inevitable; did that 124
to deaden way; couldn't port, for it would hit the brig; if not *starboarded*, the Hector would hit us on port side. I observed no change in the Hector's course before I hove the wheel hard a starboard; the Hector might have sheered off by porting her wheel.

Q. How could the Hector have avoided the collision?

A. By porting her wheel 200 y'ds off the brig, we porting our wheel at the same time.

Q. Any other way?

A. Hector might have gone on the larboard quarter of 125

the brig; we were between 2 and 3 miles from the light-house, between 3 and 4 miles from Sandy Hook at the time of collision; were one-half to three-quarters of a mile from the bar, outside of it, about north N. west from the south bar when first began running for the brig; I think the Hector was a little nearest Mabey; is the fastest boat of the two considerably; before the Hector slowed and stopped she had not been at any time to rest; I don't think she had been up with the brig; she hadn't got there
126 yet; after the collision quite a quantity of old rotten wood lay on our bow; it was not there before the collision; came from collision with the Hector; it was from the Hector. I have drawn a diagram myself; this is it. Shown to the judge. Marked No. 2.

127 Cross-examined.

I don't and did not own any part of the boat.

Re-direct.

If the Hector stopped when we stopped, the collision would not have taken place.

Cross-examined.

When I stopped the distance was about three lengths off, about 300 feet distance between us; and the Hector when we slowed was a length and a half from the brig's jibboom; was 400 feet
128 from the Hector when we first rung to slow; we rung to slow so as not shoot by the brig; I can't say it was danger of collision; didn't think then the boats would come together, we being twenty feet from the brig; if it was our intention to round to, we would keep off farther to the north and east; if we wanted to round to, would leave 300 feet between us and the brig, and we could have gone west or east; to round to, could have gone west; when we started for the brig she bore a little on our starboard bow; we ran a little towards her to get on her course; when a
129 quarter mile off we could have gone on the larboard side of the brig by going out of our way if we wanted to; we could have done that one-*eigth* of a mile off; it was a very light breeze; not more than two or three knot breeze; we might have gone to larboard of the brig in 300 feet up to the time we rung our bell to slow; we had not changed our course; we were then a length and a half from the end of her jibboom; our position
130 was ; when we rung to stop, we were fifty or sixty feet off the jibboom; our starboard side would have passed thirty or forty feet from the brig; if we kept on, space would be about thirty feet, as we went side by side; as we and the brig went side by side; when I first saw the Hector she was to north and east; brig was on our starboard quarter, and Hector was heading about west-northwest; she was about a mile in the rear; Hector and brig

about one-quarter mile apart; when we first saw Hector, Mabey was not much more than a mile off the brig—Hector 131
was one-third of a mile off; when she got in the brig's wake and straightened up, the Hector followed the same course till the collision; that would be N. NW.; I didn't see the Hector heading for the larboard quarter at any time before collision; at this time I had not been piloting outside before I went in this vessel; I had been on this vessel about three weeks; had been on 132
several tug-boats before, inside boats that occasionally run outside; I supposed Hector was running for brig; it was our intention to get there first if we could; I expected Hector would go on the other quarter; I supposed Hector would go on other quarter, rather than come in collision with us; I didn't want to compel Hector to go any way; I wanted to get between the Hector and the vessel if she didn't go on the other side; I saw she headed for the brig's starboard quarter after we were close together; I know it is customary to come up on the weather quarter; I 133
knew it would be nautical and customary for a boat to round to for a tow if she expected a tow; if I was in a sailing vessel, would not make up my mind; engine worked with tell-tale; I don't know whether the engineer is familiar with it; have seen the engineer make mistakes; have known the *engine* make mistakes; he ran into a brig foot of Clarkson street by mistake; rang to back, and boat went ahead and struck the brig; when he went ahead I rang to stop; I afterwards rung to back; am not 134
positive whether he went ahead then; this was after the collision with the Hector; there were instances of mistakes, such as catching on the centre going ahead; when I rung to back, I don't know what it arose from; I got instructions to go for the brig from the captain; was told to get there before the Hector if I could. The captain at this time stood on the forward deck. The captain's place is anywhere he likes to stay; a person stand- 135
ing in pilot-house couldn't see which way our engine worked.

Re-direct.

When I went out of the pilot-house the engine was reversed; then it was making turns back when I got out of the pilot-house; could tell it was going back by connecting rod. These mistakes happened round the river at different times; working round harbor up to time; slowed engine; I did not think the Hector would go on the starboard side of the brig; spanker-boom 136
was swung on larboard side; if I was in the Hector I don't think I would have taken the starboard after quarter of the brig.

Isaac D. Briggs: Custom-house officer; shown bill of sale; this is recorded in the custom-house, dated Dec'r 14, 1855.

Rob't Walsh, sworn in dini: Never owned a part of this vessel, nor interested in her. Sworn in chief: Was on Mabey 137
the day of collision; just before the collision I was on the

forward deck; I think the Mabey got to the brig a little ahead; Mabey rung to slow, then to stop, and two bells to go back; Hector was then 2 or 3 lengths of Mabey; Mabey might have been 100 yards; I run into the engine-room, told the engineer to back strong; from the time the bells rang she ought to have made five, six,
138 or seven revolutions back her way in water; she was going ahead; her way was deadened; can't say she was not going as fast, nor near as fast as before; before she was going very fast for the brig; can't tell how fast the Hector was coming; she hadn't stopped much when we struck her; both boats tried to avoid collision; I don't think the Hector's wheels were not going
139 ahead; at the time of collision they were stopped about the Hector's length off; M. Sweeny and Capt. Woodworth were in the pilot-house of the Hector; I have been to sea some 10 or 12 years; followed steamboating, slooping, &c.; not accustomed to towing business. It is an established rule, when one tug gets to ship the other goes away. On that rule I should judge the R. L. Mabey was entitled to the brig. Have known the Hector a good many years; I have known her 10 or 12 years; think I have seen Z. Taylor on her, won't be sure. After the collision there was
140 some timber left on the forward deck of the Mabey, from her deck, beams, &c.; I helped to throw it overboard; it was like punk; it came from the Hector. The Hector's guard was held up by a large iron rod running from her guard down to her hull; forward of wheel, it held her guard up; all boats have it, but don't have iron.

Cross-examined.

When the bells rung to slow, I anticipated the boats would come together; don't know where the captain was; I think he went aft, abaft the wheels; I went to the engine-room; got on for-
142 ward deck as they came together; if the Hector was not there our starboard guard would have passed forty feet from the brig. There was no room between the Mabey and Hector, and Mabey; if we had gone under the stern of the brig, and the Mabey had gone under the bow, she would have cleared her; if Hector was not there, would have done same thing.

Judge. I supposed the Mabey would run down side of the brig and speak to her.

143 If the Hector was not there, would go 20 or 30 feet off brig to speak; if wanted to round to, would give the brig half a boat's *lengths* off.

Judge. If wanted to tow her up, would go about as we did then.

I would go round under her stern and got the hawser; when bell rang to show we were a couple hundred, 2 or 300 yards from the brig; at this time I was passenger agent for emigrant passen-

gers. The Mabey went down for tow, and I to look for passengers; could tell a mile off that she was a passenger brig. 144

Re-direct.

We had had ship loaded with passengers consigned to him; tow-boats like race horses flitting about. There is no scientific way of approaching Hector; had not got to brig and entered into communication before the collision; I was looking out for that purpose.

William Sweeny called for clmts.: Pilot of the Hector; hired; first day I came here was *supœnaed* by Sturgis; I am now *subpœned* by defence; before collision Captain Woodworth had charge of the Hector's wheel; I was alongside of him; we got up just to about the brig's stern, hardly lapping, yet, when collision took place, our bow might have been lapped with the 145 stern of the brig; we got up to her, lapped her a little, two or three feet, not more (we both got there together); we hadn't entered into communication with the pilot of the brig till after the collision; we were about two lengths from the Mabey when I apprehended collision; as *nigh* as I could tell, not over two lengths, the Hector not over one hundred; our engine went 146 back; don't think either made more than two turns back; bells rang before coming together; I said to Capt. W., we are coming together; he said, no, she will go under our stern; I say, we are coming pretty close; says he, she will go under our stern. The Hector answers her engine as well as any other old boat; more difficult to stop with than against a flood tide; we had not slowed our boat, &c., before the collision; after the collision *rang* alongside, asked the pilot what he thought of that; the pilot laughed, shook his head, said nothing; had been run- 147 ning after the brig some time before coming together; told engineer to hurry up, we had a ship to tow to sea; told engineer to get there first, if he could; after the collision, came up and went to sea with her same day; took ship from East river to sea; after that we towed various vessels on sound side; before I came on board she had a collision; after the collision looked at the damage; hull was not broken in; it knocked underpinning of her guard out; she hit us, rolled us, and went under our guard; the Hector was the heaviest of the two; the Mabey was a light boat. When 148 I told captain we were coming if we ported helm, the collision would not take place I don't suppose *I suppose* it was the capt.'s intention to cut out the Mabey if he could; if I had charge of the Hector I would have stopped her before he did; guards had been cut off, and pieces put in planks pretty poor on guard; pieces of wood put on it, strengthened by iron rod. After the collision an entire new deck was put on; a person could walk on it before the collision. The Hector was not, at any time, on the star-

board bow of the brig; heard some one hail from the Mabey; it was just at the time we came together.

Cross-examined.

I had been a couple of weeks on the Hector at the time of the collision, and left 7 or 8 days after. Capt. Woodworths is dead. I went into the employ of the New York and Erie Railroad, capt. of barge; since this collision have not been in Clough's employ—have not spoke. Clough spoke to me about it before Saturday night; letter left at my house; he spoke to me two or three mornings before Saturday; he met me in West st. after the collision; a statement was made out (being shown a paper, he says this is it); Capt. Wentworth brought the paper; wanted me to sign it; I said I would not put my name; he said Sturgis owed him money; I said you may sign it for me, if he liked; I would not swear to it; I said it was not right. I went in wagon yesterday with Walsh; neither Clough nor Walsh talked it over with me till I went on stand, nor with McMahon; I was at his office in another case; went with another man; was Schultz; he had libel; didn't speak to McMahon. We were running near the same course as the brig from eastward; we were steering for starboard side of the brig, leaving half width opening between us and the brig; after the collision we were a length astern of brig, and started up when we first saw the Mabey; she bore I could not say what course; the Mabey was heading for the brig's bow, and we for her stern; she bore a little to north, about northeast, to take vessel in tow; we run up alongside and take hawser; would go about two hundred feet from the brig to make sweep to come round; we got off good ways to round to; captain said he expected her to do that; she would have to do that; I thought of course she would do that; I didn't think but what she would go around.

Judge. I thought the Mabey was going to speak.

Expected her to go under our stern and go round on other side of brig.

Cross-examined.

I left the Hector for a better berth. No trouble between me and him.

Re-direct.

The statement was brought already written out; he read it; told him it was wrong; signed it to enable the captain to get money; told him he might put my name to the paper. Have received no promise from Clough or counsel.

Reuben Coffin: Four years tow-boat; following sea 24 years; have towed outside more or less four years. No general custom how to approach vessels unless you are alone; when I know she is to be towed, we round to; come to her just as it happens; have seen that done over time and again; very seldom see two boats after one vessel; the boat that gets to the vessel first makes a bargain, and the other goes away. 154

Cross-examined.

If coming head and head with sailing vessel, and saw tug coming up on starboard side, I would meet the tug. I am in the John B. Lock; she is about the size of the Mabey; I should not consider it good judgment to run the risk of meeting a vessel; should not cross a vessel's bow; I should make calculation to stop, so as to be still alongside of vessel; could converse at 60 or 70 feet from brig. 155

Hiram Wheeler: I am tugman of steam-tug three years round Sandy Hook; before that steamboating, slooping; followed water since 1835. The general custom is to get to vessel as quick as you can; never knew any custom as to which side; would get nighest to her I could I would take a position. 156

Judge. Windward side is generally best to speak a vessel, then can hear.

Every man has his own rule.

Cross-examined.

I am in the steamboat Underwriter since July 3, running since Aug. 11 last; before that on Joe Johnson, in the employ of the commissioners of emigration; before that in Nimrod; she was in passenger business previous to J. Johnson; I was on Fairfield in outside towing, and on the General Scott; I swear that boat was engaged in outside towing; if I was closest to brig, I would keep on and run risk of meeting. 157

Samuel Brandoe: I was engineer of the Mabey at one time after Ten Eyck; going 10 or 11 knots per hour; four revolutions back would stop her.

Cross-examined.

I could stop her in two lengths.

John S. Ray: tow-boat Peter eight years; once in while outside Sandy Hook; my business out there is not general; I followed water twenty years; during that time tugged five years in N. Y. harbor; don't know any general custom in approaching to solicit a tow.

Cross-examined.

My boat is chiefly inside towing. (Respdts. rest.)

Rob't H. Colwell, for liblnt.: I was on board the Hector at the time of the collision; was *fore*man on Hector at time 159

of collision; stood at foot of hog-brace; my boat at the time of the collision was lapped on to the brig's quarter; previous to the collision we were following the same course on the brig; we had stopped and spoke to the brig before collision; the wheels of the Mabey had given one revolution back when she struck us; we had spoken the brig; don't recollect whether to captain or pilot;
160 think the pilot; nothing to prevent my view of all this; our captain, I am sure, spoke from our vessel.

Cross-examined.

I don't recollect the words he said particularly certain; I heard him speak on this occasion; hog-braces run from after part of the wheel to forward part of boat; I was fireman then; I had no business in the fire-room then; we had stopped four or five minutes on the brig's quarter before collision.

Re-direct.

There was another fireman on board, who was then in
161 the fire-room.

John A. Boyd for clmts.: This bill of sale was filed in custom-house yesterday, Oct. 22; has been there about a year; not recorded before on acoount of informality; enrolment affords no index of time of filing bill of sale; enrolment was made on change of ownership; in previous enrolment Lampman appears as owner.

Mr. Mahon offers bill of sale; obj. to by libellant.

Rob't H. Colwell, for libellant, recalled: When the boats
162 were approaching pilot ran aft of her engine.

Judge. Ran aft just as struck.

After the collision our captain spoke the brig again; don't recollect what was then said; when she struck she made one revolution back; after that they stopped her.

John M. Davies: Cook on Hector at the time of collision; the collision had taken place, I went forward; Mabey's stern was into Hector's broadside, little forward of the wheel-house; Captain Woodworth sung out, what the devil are you about; made some reply from other boat, but forget what it was. [Judge.] I
163 was on deck, inside room; could see ahead; as the Mabey came into us, we were up alongside the brig; before collision our captain had been chasing, and was speaking her before the Mabey struck us.

Cross-ex'd.

It was the fore part of the day, not far from twelve; was getting ready for dinner.

Richard Yates for libellant:

164 Marsh. Objected to by respondent that we must not go into proof of custom now.

Donohue. We want to prove proper mode of approaching vessel. Admitted by court as rebutting.

I have been in towing business about 25 years in outside boats; it would not be good judgment for a steamboat coming down, meeting a vessel, to keep on the starboard side of a tug; was following the vessel on the same side; it would not be good seamanship.

Cross-examined.

The boat following the vessel would be entitled to have her 165
to tow; she is in proper position to speak her if each tug be equally near; the one coming down must round to; it would make no difference which side she went; it is a rule that the following tug is entitled to the ship the farther off than the meeting tug; if both tugs start at same time for same vessel, and one gets there first, or if both about same distance off, the boat ahead must give way to the following tug.

Cross-examined.

The boat following the vessel has decidedly the right to the tow in preference to the tug meeting. The Mabey is much faster than the Hector. 166

Salters Hoffmire: I am steamboating for near twenty or twenty-five years in tug business, out and inside; boats principally outside, both large and small; it is not good judgment for a boat meeting a ship to keep on if a boat is coming after the ship for a tow.

Cross-examined.

A boat coming down couldn't talk and engage a tow, and is not in position as well as a boat following to tow; if the meeting tug is nearest, it is still good seamanship for the following 167
tug to keep on, and the meeting tug must get out of her way; I shouldn't take a pilot's advice; would use my own judgment; if you can get to tow first and make a bargain, rule is .

Judge. The most usual way is, sweep round and speak.

When I found a tug following a vessel, I always give way; it makes no difference which side round to, or would round to and come up on the weather quarter; I have known the 168
Hector a long time, about fifteen years; didn't know her as Poinsett; saw her lay at navy yard; she was sold by government; had never heard she was condemned.

Re-direct.

As far as I knew her she is sound; had her on dock; saw nothing wrong about her; Capt. Woodworth is as competent a man as there is in business; he had been in business six, seven, or eight years to my knowledge; might have been longer.

Richard Brown: Pilot Sandy Hook; been so 19 years; it is not good judgment for meeting tug to run down in following tug on same side of vessel, and run risk of meeting her.

Cross-examined.

169 It is good judgment for following tug to go and meet approaching tug; she has the right to speak the vessel; the meeting tug must round to on one quarter or the other. It is good seamanship for following tug to run the risk of meeting approaching tug, though he knows she is to round to, meet, and ship.

Walsh called by libellant: Weed, who chartered Mabey, was
170 one of the owners; passengers were to be sent by Erie railroad; all we could get would sometimes use Erie railroad barges for passengers.

Cross-examined.

Weed has no control over Erie railroad employees or barges, to my knowledge; Erie railroad had no control over me then; I am not now in Weed's employ; don't know that Clough and Weed were in possession of vessel after Captain Lampman left; I knew Weed *has* control of emigrant business; I am on board of vessel in which Hoffmire is; have never seen him round to
171 much; if all alone would come up under weather side and round to.

Albert C. Malcolm, for libellant: Sandy Hook pilot; have been so 12 years last August; it is not good judgment or seamanship for tug ahead to run risk of meeting tug following vessel in that way.

Cross-examined.

It is not bad seamanship for following boat to keep on.

172 Q. If both boats are an equal distance off when they start for the vessel, *it is* good judgment for the following tug to keep on, and meeting tug must give way?

A. It is better judgment for the following tug to cut out the coming boat; the following tug, tho' warned by the pilot, has a right to keep on.

Rich'd R. Costar: Pilot Sandy Hook 30 years.

Q. Suppose a brig heading up and a tug following on
173 her starboard quarter with a tug approaching, is it good judgment for approaching tug to keep on and risk a collision?

A. No.

Cross-examined.

It is not good judgment for any vessel to risk a collision.

Re-direct.

It is good judgment for the following tug to keep after on the brig.

Cross-examined.

If she sees a tug approaching on weather quarter, both ought to back out; the meeting tug is not approaching the vessel in a proper manner; she ought to make way and come round 174 under her stern.

Q. If the meeting tug could go up to the vessel's quarter, and the following tug knows the other to be the fastest, what would be proper?

A. The approaching vessel ought to go on the port side.

Q. Repeated.

A. The following tug ought to go to the weather quarter, and the meeting tug ought to go on the port side.

Q. Repeated.

A. The following tug is coming up in a proper position, and the approaching tugs should go on the port side; tugs should always approach in a proper manner.

Re-direct. 175

It is the duty of approaching tug to go on port side, and for following tug to go on the weather side.

John Fleming, for libellant: Carpenter; saw the condition of timber, &c., of Hector; it was sound; the beams and knees were sound; thirteen long beams went all way across; examined boiler; was under main deck in hold, very little past gangway, six or seven short beams and thirteen others running all the way across. (Libellant rested.) 176

Charles Hazzard, for respondents, excluded.

Isaac S. Hollinback, for respondents: Clough's partner; know Mabey; recollect when Clough and Weed owned her; Clough and Weed were in possession of her as owners, after the collision; don't know whether Weed sold before Tenyke sold; Weed sold to Clough, and Clough became sole owner.

Cross-examined. 177

Lampman was part owner while in her; he left her about a year ago, some time in 1855; Tenyke was there all last season, till late in the fall; in November, 1854, Clough was part owner; Tenyke owned then; can't say positively if Lampman owned *them* or not.

Lampman recalled by libellant. Objected to. Offers various bill of sale. (Both sides rest.)

Statement alluded to in Minutes. 178

On the 11th August, 1854, the steamboat General Zachary Taylor, when alongside the brig Wanderer, laying between the bar and light-ship outside Sandy Hook, was run into by the steamboat R. L. Mabey, and was damaged in consequence to a great ex-

tent, breaking every beam on starboard side of the boat forward of the wheel-beam, 13 in number, every knee on the outside,
179 including two under the wheel-beam, and several of the hanging and sister knees on the inside of the boat; also, injuring the deck very badly, splitting the thick oak plank in the centre of it, and straining the hull badly. And we, the crew of the General Zachary Taylor, consider the collision to have resulted from gross carelessness and incompetency on the part of those who had in charge and managed the R. L. Mabey.

The General Z. Taylor, when run into, was lying alongside
180 the said brig, engine stopped. The R. L. Mabey came towards us nearly head to head with full steam, until so very near that she could not be stopped in season to avoid the collision. Just at this moment the pilot or person about her deck ran aft to avoid the blow, and did not make the slightest effort, by steering the R. L. Mabey, to avoid the General Z. Taylor. When so near to the General Z. Taylor as to render the collision inevita-
181 ble the captain and pilot of the General Z. Taylor (both being in the pilot-house) rang the bell to back, and several back revolutions were given the engine before the boats came together. The R. L. Mabey ran the entire length of the General Z. Taylor's guards, until her bows were stopped by the wheel of the General Z. Taylor, and breaking every beam in her course. The pilot or person in charge of the R. L. Mabey appeared to be
182 a very young man, and to be quite inexperienced in the business; he ran aft and kept himself out of the way, until the R. L. Mabey had been entirely stopped by collision with the General Z. Taylor.

W. H. WOODWORTH, *Capt.*

his
WILLIAM ⋈ SWEENY, *Pilot.*
mark.

Bill of Sale alluded to in Minutes.

To all to whom these presents shall come, greeting:

Know ye, that I, William Ten Eyck, of Kinderhook, State of New York, owner of one-sixteenth of the steamboat or vessel called the R. L. Mabey, of New York, of the burthen of 137 65-95 tons or thereabouts, for and in consideration of the sum of five
183 hundred dollars, lawful money of the United States of America, to me in hand paid, before the sealing and delivery of these presents, by John Clough, of Coxsackie, State aforesaid, the receipt whereof I do hereby acknowledge, and myself therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell unto the said John Clough, his executors, administrators, and assigns, the said one-sixteenth of the said steamboat or vessel, together with one-sixteenth the

mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereunto appertaining and belonging, the certificate of enrolment of which said steamboat or vessel is as follows, to wit: 184

Enrolment permanent, No. 40.

Enrolment in conformity to an act of Congress of the United States of America, entitled "An act for enrolling or licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same; and of an act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, passed 7th July, 1838, and 185 amended 30th August, 1852. John Clough, of Coxsackie, State of New York, having taken or subscribed the oath required by the said act, and having sworn that the said John Clough, (9-16,) Robert L. Mabey, (2-16,) and Henry Weed, (2-16,) of New York, William Ten Eyck, (1-16,) of Kinderhook, and Richard W. Peary, (2-16,) of Clermont, State aforesaid, are citizens of the United States, and sole owners of the ship or vessel called the R. L. Mabey, of New York, whereof Richard W. Peary is at present master, and, as he hath sworn, is a citizen of the United States; and that the said ship or vessel was built at Green- 186 point, State of New York, in the year one thousand eight hundred and fifty-four, as per enrolment No. 59, issued at this port this day, now cancelled, property changed in part. And said enrolment having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and six feet six inches, her breadth twenty-one feet six inches, her depth six feet six inches, and that she measures one hundred and thirty-seven 65-95 tons, and that she is square sterned steamboat, has a round tuck, no galleries, and no head; and the said John 187 Clough having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of New York.

Given under our hands and seals, at the port of New York, this 2d day of March, in the year one thousand eight hundred and fifty-five.

To have and to hold the said one-sixteenth of said vessel, 188 and appurtenances thereunto belonging, unto him, the said John Clough, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said John Clough, his executors, administrators, and assigns, forever. And I, the said William Ten Eyck, have, and by these presents do promise, covenant, and agree for myself, heirs, executors and administrators, to and with the said John Clough, his heirs, executors, administrators and assigns, to warrant and defend the said

one-sixteenth of said vessel, and all the other before mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said William Ten Eyck, have hereunto set my hand and seal this 14th day of December, one
189 thousand eight hundred and fifty-five.

WILLIAM TEN EYCK.

Sealed and delivered in the presence of—

P. H. CANNON.

State of New York, ss.

Personally appeared before me William Ten Eyck, and acknowledged the within bill of sale to be his free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, this 14th day of December, in the year one
190 [L. S.] thousand eight hundred and fifty-five.

J. BENWOORT.

Endorsed: 12,239 1-16, S. B. R. L. Mabey. Bill of sale from William Ten Eyck to John Clough. Custom-house, New York, August 19, 1856. Rec'd for record at 1 o'clock p. m., and recorded in book 18, B. S. E. V., pages 437, 438.

J. B. GREGG, *Cl'k.*
J. WILSON, Jr., *D. Coll.*

Bill of Sale.

Know all men by these presents, that I, David Lampman, of the town of Saugerties, county of Ulster, State of New York, part owner of the steamboat Robert L. Mabey, now lying at the city of New York, of the burthen of 137$\frac{6}{95}$ tons, for and in consideration of the sum of one thousand six hundred and twenty-five dollars, lawful money of the United States, to me paid, by John Clough, of the town of Coxsackie, county of Green, and State aforesaid, the receipt whereof I hereby acknowledge, have bargained and sold, and by these presents do bargain and sell unto the said John Clough, his heirs, executors, administrators, and assigns, all my interest, being the one-eighth, in the hull or body of said boat or vessel; together with all anchors, cables, fixtures and furniture, and all other necessaries thereunto appertaining and belonging; the certificate of enrolment of which said steamboat :

No. 93. Enrolment.—Permanent.

Enrolment in conformity to an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," and of An act to provide for the better security of the lives of passengers on board of vessels propelled in

whole or in part by steam, passed 7th July, 1838, and amended 30th August, 1852. David Lampman, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he, said David Lampman, $\frac{1}{8}$; Robert L. Mabey, $\frac{1}{8}$; Henry Weed, $\frac{1}{8}$; Wilson Small, $\frac{1}{4}$, and Leroy Lockwood, $\frac{1}{8}$, of said place, and John Clough, $\frac{1}{4}$, of Coxsackie, State aforesaid, are citizens of the United States and sole owners of the steamboat or vessel called the R. L. Mabey, of N. York, whereof D. Lampman is at present master, and, as he hath sworn, is a citizen of the United States; and that the said ship or vessel was built at Greenpoint, State of New York, in the year 1854, as per certificate of William Collyer, under whose direction she was built; and J. S. Benedict, d'y surveyor of this district, having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred six feet six inches, her breadth twenty-one feet six inches, her depth six feet six inches, and that she measures one hundred thirty-seven $\frac{88}{95}$ tons, and that she is a square sterned S. boat, has a round tuck, no galleries, and no head; and the said David Lampman having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of New York.

Given under our hands and seals, at the port of New York, this 30 day of June, in the year one thousand eight hundred and fifty-four.

To have and to hold the said steamboat or vessel and appurtenances thereunto belonging, unto the said John Clough, his heirs, executors, administrators and assigns, to the sole and only proper use, benefit, and behoof of him, the said John Clough, his heirs, executors, administrators and assigns, forever: and I do for myself, my heirs, executors and administrators, covenant and agree to and with the said John Clough, his heirs, executors, administrators and assigns, to warrant and defend the said boat, or my interest in her, being the one-eighth thereof, and all the other beforementioned appurtenances, against all and every person and persons whomsoever.

In witness whereof, I have hereunto set my hand and seal, this 13 day of November, 1854.

DAVID LAMPMAN. [SEAL.]

Sealed and delivered in the presence of—
HENRY MILLER.

State of New York, *ss.*

Personally appeared before me David Lampman, and acknowledged the within bill of sale to be his free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, this 22 day of Oct., 1856.

HENRY CAMERDEN, JR.,
Notary Public.

Rec. for record, and recorded Oct. 22d, 1856, at 15 m. past 1 o'cl'k p. m.

J. B. GREGG, *Clk.*

CUSTOM-HOUSE, *New York.*

I certify the within to be a true copy of an original bill of sale on record in this office. Given under my hand and seal of office this 11 day of December, A. D. 1858. [SEAL.]

J. WHITE,
Deputy Collector.

U. S. district court.

RUSSELL STURGIS
agt.
THE STEAMBOAT "R. L. MABEY," &c.

191 We consent that the annexed deposition of Eugene H. Sullivan may be read, sworn to before a notary public, and may be read (so sworn to) on the trial hereof, in the same manner and with like effect as if duly taken before a United States commissioner de bene esse, on due notice to the respondents, subject to all legal exceptions, except as to the mode of taking and swearing to the same.

192 Dated December 7, 1855.

D. McMAHON.

U. S. district court.

RUSSELL STURGIS
agt.
THE STEAMBOAT ROBERT L. MABEY, her tackle, &c.

Examination of Eugene H. Sullivan, a witness for libellant, taken pursuant to annexed consent.

Southern district of New York, ss.

193 Eugene H. Sullivan, being sworn, says: I am, and I was during the year 1854 a Sandy Hook pilot; I am about to leave this State for Alabama, to be gone about four months; I shall leave to-day.

Ques. In the month of August, 1854, were you or not acting as pilot on board any brig between the bar and the light-ship outside "Sandy Hook?" if so, state on what day in said month,

194 and on board what brig.

Ans. I was on board the brig Wanderer, as near as I can remember, on the 11th of August.

Ques. How was the brig heading when she arrived between the bar and the light-ship?

Ans. She was heading about north-northwest.

Ques. Do you know the steam-tug Hector, otherwise called the General Z. Taylor, and did you know said tug in said month of August, 1854; if yea, was said tug, on the 11th of August, outside of Sandy Hook?

Ans. I do; she was.

Ques. At what time in said day did you first see the said 195
tug, and in what direction was she from the brig, at what time, and how far off?

Ans. I saw her about ½ past 9 or 10 o'clock; she was about a mile distant, about southeast of the brig.

Ques. How did Hector head at that time?

Ans. She was heading towards the brig about northwest; 196
she was coming for the brig.

Ques. Did she or not come to the brig; and if so, how soon after you saw her, and on what side of the brig did she come?

Objected to.

Ans. She came to the brig in, I suppose, 10 or 15 minutes, on her starboard side.

Ques. What did the Hector do after coming alongside the brig?

Ans. About 2 or 3 minutes before she came up to the brig 197
she stopped her engine; she then came alongside the brig with the way she had on; her captain spoke to me; asked me where we were from.

Ques. What next occurred?

Ans. While the Hector was laying alongside the brig, the steamboat R. L. Mabey ran into her.

Ques. How long had the Hector been laying alongside 198
the brig when the R. L. Mabey ran into her?

Ans. About long enough to ask me this question; she might have lain there a half a minute; it took her some time after she stopped her wheel till she got alongside.

Ques. When she got alongside was she or not going through the water; and if yea, how fast, or about how fast?

Objected to.

Ans. She was going through the water, but not so fast as the brig; she was dropping astern, if anything.

Ques. How fast was the brig going? 199

Ans. Not more than a mile an hour.

Ques. When did you first see the R. L. Maybe on the 11th of August, and in what direction was she from the brig?

Ans. I saw her about the same time I saw the Hector; she was in a north-northeast direction from the brig.

Ques. How far off was she then from the brig?

Ans. She was half a mile to a mile off from the brig.

200 Ques. How was she heading then?

Ans. I should think she was coming southwest or west-southwest when I first saw her.

Ques. Where did she strike the Hector?

Ans. She struck her on the starboard side—starboard bow I should call it.

Ques. Describe how she struck the Hector?

201 Ans. She struck her stern on, and I think her engine was going the whole time; her wheels moved until she struck; (latter part, commencing "I think," objected to.)

Ques. When the Mabey struck the Hector, did you observe whether or not she was in motion? If yea, state whether or not she was in motion.

Ans. Her wheels were in motion up to the time of the collision.

Ques. Do you know, and if so state, how fast, or about how fast she approached the Hector?

203 Ans. She was running at about seven or eight miles an hour.

Ques. Did you observe what damage she did to the Hector? and if yea, describe the same, so far as you observed it.

Ans. I couldn't tell what amount of damage; I saw the splinters flying pretty lively; I thought she would have sunk the Hector.

Ques. When the Mabey approached the Hector, did you
204 observe any person in the pilot-house, or on the forward deck of the R. L. Mabey? and if yea, state what, if anything, was done by said persons.

Ans. About a moment before the collision the pilot of the Mabey ran out of the pilot-house; there were, I think, three persons on the forward deck, and I think one of three persons on the forward deck sung out "stop the Mabey"—sung out, I think, to the
205 engineer; while they lay in that condition they dropped astern of the brig.

Ques. Where did the pilot of the R. L. Mabey run to?

Ans. I saw him leave the pilot-house and run towards the stern.

Ques. Did you observe whether or not the men on the R. L. Mabey's forward deck left the deck; and if so, where did they go to?

206 (Objected to as grossly *leading* and improper.)

Ans. They ran from the forward part of the deck towards the engine-room.

Ques. Could the R. L. Mabey have avoided the collision? and if yea, describe how she could have avoided it.

Objected to.

Ans. She could by stopping or by putting her wheel to starboard, if she had done so in time.

Ques. Could she or not have gone west of the brig?

Ans. She could, half an hour before that.

Ques. Did you or not hear any bell rung on board the R. 207
L. Mabey when she approached the Hector?

Ans. I did not.

Ques. Did you or not hear any bell rung on board the Hector when the Mabey approached?

Ans. I heard the bell rung when they rang to stop the Hector.

Ques. Did you or not observe whether the Hector was backing before the collision?

Ans. I did not.

Witness being cross-examined: I was pilot on the Wanderer; I went on board of her on the 11th August, at daylight; on the 10th August the collision took place, between ten and 209
eleven o'clock a. m.; on the 11th, some time before dinner, light air of wind from the southward; I think it was nearly slack water, last of the ebb tide; I saw the Hector first; it might have been five or ten minutes after seeing the Hector before I saw the Mabey; the Mabey was ½ a mile to a mile off when I first saw her; I did not pay particular attention to her; I did not have hold of the wheel of the Wanderer; I was pilot of her when I first saw the Mabey; I was paying attention to the Hector; 210
I had given the course of my vessel; I cannot tell what course the Mabey before I saw her; Hector was astern of me when I first saw her; the Mabey was on our starboard hand, off of our bow, about N. NE.; our course at the time I first observed the Mabey was N. NW., or about that. The Hector was going 6 or 7 knots an hour before she stopped her engine. The Hector might have been 100 or 200 yards from us when she stopped 211
her engine; she was on our starboard quarter then; I could throw a biscuit on board, say 10 yards from us then. At the time the Hector stopped her engine, the Mabey was about an ⅛ of a mile or less ; I could not say exactly. The Mabey ran into the Hector forward of her wheel-house, started some splinters, and I thought went into her hull; I could not tell any further; they were locked together and dropped astern of me. Just before Mabey struck Hector, the pilot of the Mabey ran out of the wheel-house, and forward deck man ran aft. The two steamboats were 212
about coming together when the pilot ran out of the wheel-house, not 3 yards apart; I did not observe any person on the forward deck of the Hector.

Ques. Did you observe any one on the forward main deck of the Hector?

Ans. I don't know as I saw anybody there; I think not. 213

Ques. Suppose both steamboats had ported their helms before they came together, could the collision have been avoided?

Ans. No, sir, not unless they did it before they came in speak-

Ans. She was half a mile to a mile off from the brig.

200 Ques. How was she heading then?

Ans. I should think she was coming southwest or west-southwest when I first saw her.

Ques. Where did she strike the Hector?

Ans. She struck her on the starboard side—starboard bow I should call it.

Ques. Describe how she struck the Hector?

201 Ans. She struck her stern on, and I think her engine was going the whole time; her wheels moved until she struck; (latter part, commencing "I think," objected to.)

Ques. When the Mabey struck the Hector, did you observe whether or not she was in motion? If yea, state whether or not she was in motion.

Ans. Her wheels were in motion up to the time of the collision.

Ques. Do you know, and if so state, how fast, or about how fast she approached the Hector?

203 Ans. She was running at about seven or eight miles an hour.

Ques. Did you observe what damage she did to the Hector? and if yea, describe the same, so far as you observed it.

Ans. I couldn't tell what amount of damage; I saw the splinters flying pretty lively; I thought she would have sunk the Hector.

Ques. When the Mabey approached the Hector, did you

204 observe any person in the pilot-house, or on the forward deck of the R. L. Mabey? and if yea, state what, if anything, was done by said persons.

Ans. About a moment before the collision the pilot of the Mabey ran out of the pilot-house; there were, I think, three persons on the forward deck, and I think one of three persons on the forward deck sung out "stop the Mabey"—sung out, I think, to the

205 engineer; while they lay in that condition they dropped astern of the brig.

Ques. Where did the pilot of the R. L. Mabey run to?

Ans. I saw him leave the pilot-house and run towards the stern.

Ques. Did you observe whether or not the men on the R. L. Mabey's forward deck left the deck; and if so, where did they go to?

206 (Objected to as grossly *leading* and improper.)

Ans. They ran from the forward part of the deck towards the engine-room.

Ques. Could the R. L. Mabey have avoided the collision? and if yea, describe how she could have avoided it.

Objected to.

Ans. She could by stopping or by putting her wheel to starboard, if she had done so in time.

Ques. Could she or not have gone west of the brig?

Ans. She could, half an hour before that.

Ques. Did you or not hear any bell rung on board the R. L. Mabey when she approached the Hector? 207

Ans. I did not.

Ques. Did you or not hear any bell rung on board the Hector when the Mabey approached?

Ans. I heard the bell rung when they rang to stop the Hector.

Ques. Did you or not observe whether the Hector was backing before the collision?

Ans. I did not.

Witness being cross-examined: I was pilot on the Wanderer; I went on board of her on the 11th August, at daylight; on the 10th August the collision took place, between ten and eleven o'clock a. m.; on the 11th, some time before dinner, light air of wind from the southward; I think it was nearly slack water, last of the ebb tide; I saw the Hector first; it might have been five or ten minutes after seeing the Hector before I saw the Mabey; the Mabey was ½ a mile to a mile off when I first saw her; I did not pay particular attention to her; I did not have hold of the wheel of the Wanderer; I was pilot of her when I first saw the Mabey; I was paying attention to the Hector; I had given the course of my vessel; I cannot tell what course the Mabey before I saw her; Hector was astern of me when I first saw her; the Mabey was on our starboard hand, off of our bow, about N. NE.; our course at the time I first observed the Mabey was N. NW., or about that. The Hector was going 6 or 7 knots an hour before she stopped her engine. The Hector might have been 100 or 200 yards from us when she stopped her engine; she was on our starboard quarter then; I could throw a biscuit on board, say 10 yards from us then. At the time the Hector stopped her engine, the Mabey was about an ⅛ of a mile or less ; I could not say exactly. The Mabey ran into the Hector forward of her wheel-house, started some splinters, and I thought went into her hull; I could not tell any further; they were locked together and dropped astern of me. Just before Mabey struck Hector, the pilot of the Mabey ran out of the wheel-house, and forward deck man ran aft. The two steamboats were about coming together when the pilot ran out of the wheel-house, not 3 yards apart; I did not observe any person on the forward deck of the Hector. 209 210 211 212

Ques. Did you observe any one on the forward main deck of the Hector?

Ans. I don't know as I saw anybody there; I think not. 213

Ques. Suppose both steamboats had ported their helms before they came together, could the collision have been avoided?

Ans. No, sir, not unless they did it before they came in speak-

ing distance of me. I don't think the Hector could have ported her helm, because she had stopped her engine and was talking to me.

214 Ques. Could the collision have been avoided by both vessels porting their helms before the Hector stopped her engine?

Ans. Certainly it could.

Ques. How far off from each other, in such case, could the collision have been avoided by porting their helms?

Ans. If they both calculated on porting their helms, they might have done it within a length of each other.

Ques. On that day and under those circumstances, what
215 was the nearest distance to each other, that they might have avoided each other by porting their helms?

Ans. I don't understand that exactly; under the circumstances, I think the Hector had no way of getting out of the Mabey's way.

Ques. Why not?

Ans. Because she could not put her wheel a-starboard and get out of her way, and the brig was between her and the land;
216 if she had ported her helm and turned her engine, they would have come on stem and stem.

Ques. Suppose, before stopping her engine, the Hector had ported her helm, and the Mabey also, how far off from each other could they have done so in safety?

Ans. I don't know; I don't understand the question.

Ques. What was the nearest distance from each other that
217 each steamboat could have avoided each other by putting and keeping their helms hard a-port, being under headway, and before the Hector stopped her engine?

Ans. They would have passed each other if the Hector had not stopped her engine, and both boats had kept their helms hard a-port, about 400 yards from each other.

218 Question repeated. I can't answer the question; I could not tell you; I can't tell how those boats steer. The Hector was moving through the water a little slower than the brig before they came together; I observed no change in the course of the Hector just before they struck; I observed none in the Mabey's before they struck. The Hector was heading same as brig was
219 struck—that is, N. NW. or thereabouts; Mabey was heading about S. W., or a little westerly of that.

Ques. How could the Hector have avoided the collision before she stopped her engine?

Ans. By putting her helm a-starboard, a-port, or any other way.

EUGENE H. SULLIVAN.

Sworn to before me this 7th day of December, 1855.
[L. S.] WM. HENRY FORMAN,
Notary Public.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the city hall, in the city of New York, on Wednesday, the seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-six:

Present, the Honorable Samuel R. Betts, district judge.

RUSSEL STURGIS
vs. } 12,239.
THE ST. TUG R. L. MABEY.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, by the court, that the libel filed in this cause be dismissed, each party paying his own costs.

Vol. 12, No. 239—United States district court for the southern district of New York—Russell Sturgis vs. The St. Tug R. L. Mabey—Martin & Smith, proctors for lib't—D. McMahon, cl'mt—Decree—Filed the seventeenth day of December, 1856.

U. S. District Court for the southern district of New York.

RUSSEL STURGIS, Libellant and Appellant,
vs. } 220
THE STEAM-TUG R. L. MABEY, her tackle, &c., John Clough and al., Claimants and Appellees.

Please take notice that Russel Sturgis, the above named libellant, intends to appeal to the next term of the circuit court of the second circuit, from the final decree entered in this action.

Dated New York, March 6th, 1857.

Yours, &c.,
MARTIN & SMITH,
Proctors for Libellant and Appellant.

TO GEORGE F. BETTS, Esq., *Clerk.* 221

Endorsed:

U. S. district court, 12,239, 244—Russel Sturgis, libellant and appellant, vs. The Steam-tug R. L. Mabey, her tackle, &c., John Clough and others, clm'ts and appellee—Notice to appeal—Martin & Smith, proc's for libellant and appellant—Filed December 23, 1856.

United States Circuit Court, southern district of New York.

RUSSEL STURGIS, Libellant and Appellant,
222 agst.
THE STEAMBOAT R. L. MABEY, her tackle, &c., John Clough and others, claimants and respondents.

To the Honorable the Circuit Court of the United States, for the southern district of New York, in the second circuit.

The appeal of the above named appellant respectfully shows, that on or about the thirteenth day of November, in the year eighteen hundred and fifty-four, the above named Russel Sturgis, the said appellant, exhibited and filed his libel in the district court of the United States, for the southern district of New York, against the steamboat R. L. Mabey, her engine, tackle, apparel,
223 and furniture, praying, among other things, for the reasons set forth in said libel, that the said steamboat R. L. Mabey be condemned and sold to pay the claim set up in said libel, with interest and costs; and in said libel the said libellant claimed over fifty dollars as damages; that process issued out of said court, upon which said steamboat was seized; that thereupon John Clough, Robert L. Mabey, and Henry M. Weed, intervened by claim
224 and answer on behalf of said steamboat R. L. Mabey as the owners thereof, and filed stipulations in said court, upon which said steamboat was released from custody and delivered up to them; that the said claimants, on or about the sixteenth day of January, eighteen hundred and fifty-five, filed their answer to said libel, praying, among other things, that said libel be dismissed with costs in that behalf, as by reference to said libel and answer will more fully appear; to which said answer the said appellant, on or about the second day of March, eighteen hundred and
225 fifty-five, filed a replication denying the sufficiency of said answer, and reiterating the prayer of said libel; that the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said district court, on or about the twenty-first, twenty-second, and twenty-third days of October, in the
226 year 1856, upon the depositions and proofs taken in said cause, and the testimony and proof adduced by the respective parties; and the said judge having advised thereon, on the seventeenth day of December, in the year 1856, made a final decree in said cause, whereby it was ordered, adjudged, and decreed, that the said libel be dismissed, each party paying his own costs.

And the said appellant says that said final decree is erroneous, inasmuch as the said appellant was entitled to damages
227 against the said steamboat R. L. Mabey, and the said claimants intervening as aforesaid for the causes mentioned in said libel, and such damages should have been decreed, and said libel

should not have been dismissed as aforesaid; and the said appellant, for these and other reasons, appeals from the whole of the said decree, and from every part thereof, except that part thereof whereby the said claimants were condemned to pay their own costs to the next circuit court to be held in said district; and on the said appeal he intends to have said cause heard anew in the said 228 circuit court, on the pleadings and proofs in the district court, and on new and further proof to be introduced in said circuit court.

And he prays that the record and proceedings in said cause may be returned to the said circuit court, and that said decree, and every part thereof except as aforesaid, may be reversed, with costs; that the claimants and respondents may be condemned to pay to the said appellant his damages and costs in the premises; and that such other decree may be made as to the said circuit court shall seem just.

MARTIN & SMITH,
Proctors for Appellant.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Edwin M. Felt, being duly sworn, says, that on the 13th 229 day of March, 1857, he served a copy of foregoing appeal on D. McMahon, by delivering to and leaving a copy of the said appeal with the person in charge, and then being in the office, said McMahon then being absent therefrom.

EDWIN M. FELT.

Sworn to this 13th day of March, 1857, before me.
GEO. W. MORTON,
U. S. Com. 230

Endorsed: 12,239. U. S. circuit court S. dist. of N. Y. Russel Sturgis, appell't and libell't, agst. claimants of steamboat R. L. Mabey. Appeal. Martin and Smith, proctors for lib't and appell't. Filed March 13, 1857.

District Court of the United States of America, for the southern district of New York, in the second circuit.

RUSSEL STURGIS, Libellant and Appellant,
vs.
THE STEAM-TUG R. L. MABEY, her tackle, &c., John Clough and others, Claimants and Appellees.
} Bond for Costs.

Know all men by these presents, that we, Lattimer Bailey 231 and R. L. Taylor, are held and firmly bound unto the above named claimants or appellees in the sum of two hundred

and fifty dollars, to be paid to the said claimants and appellees, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors,
232 administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the 17th day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named appellant *have* prosecuted his appeal to the circuit court of the United States, for the southern
233 district of New York, for the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal
234 good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

LATIMER BAILEY, [L. S.]
R. L. TAYLOR. [L. S.]

Sealed and delivered, and taken and acknowledged this 17th day of March, 1857, before me.

JOSEPH BRIDGHAM,
U. S. Com.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Lattimer Bailey and R. L. Taylor, being duly sworn,
235 depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

LATTIMER BAILEY,
R. L. TAYLOR.

Sworn to this 17th day of March, A. D. 1857, before me.

JOSEPH BRIDGHAM,
U. S. Com.

Vol. 12, page 239. U. S. district court. Russel Sturgis, libt. and appellant, vs. the steamboat R. L. Mabey, her tackle, &c. John Clough and al., clmts. and appellees. Bond for costs on appeal. Martin & Smith, appellant's proctor. Filed this 17th day of March, 1857.

By the honorable Samuel R. Betts, one of the judges of the
236 circuit court of the United States, for the southern district of New York, in the second circuit.

To JOHN CLOUGH, ROBERT L. MABEY, and HENRY M. WEED:

Whereas Russel Sturgis, libellant, has lately appealed to the circuit court of the United States, for the southern district of New York, second circuit, from a decree rendered by the judge of the district court of the United States, for the southern district of New York, made in favor of you, the said John Clough, 237
Robert L. Mabey, and Henry M. Weed, against Russel Sturgis the libellant, and has filed the security required by law, you are therefore hereby cited to appear before the said circuit 238
court, at the city of New York, on the first Monday of April next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the northern district of New York, in the second circuit, the twentieth day of March, in the year of our Lord one thousand eight 239
hundred and fifty-seven, and of the independence of the United States the eighty-first.

SAM'L R. BETTS. [L. S.]

Endorsed: Vol. 12, page . U. S. circuit court, S. D. of 240
N. Y. Russel Sturgis, libellant and appellant, vs. the steam-tug R. L. Mabey, her tackle, &c., John Clough and others, claimants and appellees. Citation on appeal. Martin and Smith, proctors for appellant. Filed 185 .

Due service of a copy of the citation is hereby admitted.

D. McMAHON,
Proctor for Appellees.

U. S. Circuit Court, S. D. of New York.

RUSSELL STURGIS, appellant,
vs.
THE ROBT. L. MABEY, appellees.

GENT: You will please take notice on the affidavit, a copy of which is hereunto served on you, and on the papers, pleadings, and proceedings in this cause, in the district court and this court, before honorable Samuel Nelson, one of the judges of the United States circuit court, at a circuit court to be held in the southern district of New York, at the city hall in the city of New York, on the first Monday of April, 1857, on that day at 11 a. m., or as soon thereafter as counsel can be heard, that an order be granted amending the apostles filed in the above action by the preparation of a case to be settled, containing in full the testimony given on the trial of the above cause to be included in said apostles, or for such further or other order in the premises as to said court shall

seem just, and if necessary for a certiorari to bring up the records and papers of the district court.

Yours, &c.,
D. McMAHON,
Proctor Applnts.

Messrs. MARTIN & SMITH,
Proctor Applnts.

New York, Ap'l 3, 1857.

In Admiralty.

U. S. Circuit Court, S. D. of New York.

RUSSEL STURGIS, applnt.,
vs.
THE STEAMBOAT R. L. MAYBIE and owners, appellees.

Southern district of New York, ss.

Dennis McMahon, of said district, being duly sworn, doth depose and say, that he is the proctor for the appellee in the above entitled cause; that said action was commenced in the district court, for the southern district of New York, in rem, in the month of Dec., 1854, and was brought to recover the sum of $, alleged damages received by a steamboat of the appellant, in a collision with a steamboat of appellees; that said action was tried before his honor Judge Betts, on or about the month of October, 1856, who afterwards decided said cause by dismissing the libel without costs; that the appellants have appealed to this court and perfected their appeal; that on or about the 23d day of March last past, this deponent received from the appellant's proctors notice of the filing of the apostles to be used on said appeal, with the clerk of this court; that this deponent has examined said apostles on file in the circuit court, and finds that the minutes of the testimony therein contained, as having been given on the trial of this cause before his honor Judge Betts, are meagre and incorrect; that unless said minutes of testimony in said apostles are amended and made in full to conform to the testimony as actually given, the said appeal will not come fairly before this court, and great injustice will be done to the appellees in this action.

And this deponent further says, that on the trial of said cause before his honor Judge Betts, his honor announced to the counsel engaged on said trial, that owing to a lameness in his arm he would be unable to take full notes of the testimony to be given, and that he should rely on the minutes of counsel in deciding the same; that on the conclusion of the said trial the minutes of testimony of counsel were accordingly submitted to his honor, who

decided said cause, as this deponent believes, in said minutes of counsel.

And this deponent further saith, that after receiving notice of appeal herein, with a view of said appeal coming fairly before this court, this deponent, on the 2 Feb'y, 1851, notified the proctors for the appellants to prepare a case of the testimony given on the trial of said cause, to which this deponent would propose amendments and have the same settled, and then incorporated in the apostles on appeal; that to such notice the proctor for appellants verbally consented, as this deponent is informed and believes.

And this deponent further saith, that he believed in good faith that such course would be pursued until he received notice of the filing of said apostles as aforesaid, on the 25th day of March last; and this deponent further saith, that the minutes of testimony contained in said apostles appear to be made up from the few notes his honor, Judge Betts, occasionally made during the trial of said cause in the district court, and the minutes of the appellant's counsel, and further deponent saith not.

DENNIS McMAHON,
Proct. Appellt.

Sworn to before me, this 3d day of April, 1857.
THOMAS McMAHON,
Notary Public.

Endorsed: U. S. circuit court. Russell Sturgis, applnt., vs. Rob't L. Maybie. Afft. and order to show cause. D. McMahon.

We admit service of copies of the notice of motion and affidavit. Ap'l 3, 1857.

MARTIN & SMITH,
Proct. for Applt.

Adj. to Ap'l 6, 1846, at 10 o'c'k a. m., at request of applnt.
MARTIN & SMITH,
Proct. for Applnt.

Filed April 7, 1857.

In Admiralty.

United States circuit court, S. D. of New York.

RUSSELL STURGIS, appellant,
vs.
ST. BT. ROBT. L. MABEY.
} In open court, April 7, 1857.

On reading and filing affidavits and notice of motion to correct apostles, and after hearing Mr. McMahon for the motion, and Mr. Donahue on the other side, it is ordered that the apostles filed in this cause be corrected in the manner following, to wit: that the minutes of testimony furnished by the libellants, returned in said apostles, be stricken out, and that the apostles remain in this court,

and that the appellant, by or before the 13th day of April inst., prepare and serve on the appellees' proctor a case of the testimony on the trial in the court below, to which the appellee shall have 5 days after service to prepare amendments; which case shall be settled in the court below by the judge who tried the cause, and returned by the clerk of said district court to, and filed with the clerk of this court, and incorporated in the apostles herein; and in the mean time all proceedings are stayed.

S. NELSON.

Endorsed: In admiralty. U. S. district court, S. D. of New York. Russell Sturgis, appellant, vs. the St. Bt. R. L. Maybie, appellee. Order to amend apostles. D. McMahon, proctor appellees. Filed April 7, 1857.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Monday, the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-seven; present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

RUSSEL STURGIS, liblnt. and applnt.,
vs.
THE STEAM-TUG R. L. MAYBY, her tackle.

The appeal in this cause coming on to be heard, Mr. Burrill reads from apostles evidence on parts of liblnt.

Mr. McMahon reads on part of respds.

Mr. Burrill is heard on part of applnts.

Mr. McMahon " " appellee.

Mr. Burrill is heard in reply.

Cur advt. ult.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Saturday, the nineteenth day of September, in the year of our Lord one thousand eight hundred and fifty-seven; present, the honorable Saml. Nelson, an associate justice of the Supreme Court of the Unitd States.

RUSSELL STURGIS, liblnt. and applt.,
vs.
THE STEAMBOAT ROBT. L. MAYBIE, her tackle, apparel, &c., John Clough and al., clmt. and appellees.

This cause having come on to be heard on appeal on the pleadings and proofs, and allegations of the parties, and having been

argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now, on motion of D. McMahon, advocate for the appellant, ordered and judged, and decreed by this court that the judgment and decree of the dist. court in this cause dismissing the libel therein, &c., each party to pay their costs, be, and the same is hereby, in all things affirmed.

And it is further adjudged and decreed that the said claimants and appellees recover of the said libellant and appellant their taxed costs of said appeal, amounting to the sum of one hundred dollars and eighty-five cents.

And it is further ordered, adjudged, and decreed that unless the amount thus adjudged to be paid by this decree, be brought into the court by the said libellant and appellant within ten days after notice of this decree, that the said claimants and appellees do have execution against the said Russell Sturgis to compel the performance of this decree.

And it is further ordered, adjudged, and decreed that the said claimant and appellees do have summary judgment against Latimer Baily and Robt. L. Taylor for the sum of two hundred and fifty dollars, being the amount of their bond and stipulation given by said parties on said appeal for costs, to be decreed against said libellant and appellant in this cause; and that said claimant and appellee have execution against said sureties on said summary judgment to collect said costs, unless the said libellant and appellant, Russell Sturgis, ten days after notice of this decree, bring into court the amount of costs recovered by this decree.

Circuit court of the United States of America, of the south. dist. of New York, 2 circuit.

RUSSELL STURGIS, liblnt. and applt.,
vs.
THE STEAMBOAT R. L. MABEY, her engine, tackle, &c., &c., John Clough and al., clmts. and appellees.

We hereby consent that E. C. Benedict be substituted in our place and stead, as proctor for the liblnt. and applnt., in the above entitled action.

Dated N. Y., Sept. 21, 1857.

MARTIN & SMITH,
Proct. for Liblnt. and Applnt.

On reading and filing the consent of Martin & Smith, and on motion of E. C. Benedict, esq., it is hereby ordered, adjudged, and decreed that E. C. Benedict be, and he is hereby substituted as proctor, for libellant and appellant in this action, in the place and stead of Martin & Smith.

Circuit court of the United States for the southern district of New York, in the 2d circuit.

RUSSEL STURGIS, liblnt. and applnt.,
vs.
THE STEAM-TUG R. L. MABEY, JOHN CLOUGH et al., clmt. and appellees.

To the honorable the Supreme Court of the United States:

The appeal of Russell Sturgis, the libellant appellant in the above entitled action, respectfully showeth, that on the thirteenth day of September, 1854, the above named Russell Sturgis filed his libel in the district court of the United States, for the southern district of New York, against the steamboat R. L. Maybey, her tackle, apparel, &c., in a cause civil and *maratine*, for the recovery of damages sustained by him to the steamboat or steam-tug "Zachary Taylor," otherwise called the "Hector," her engine, tackle, &c., by collision with the said steamboat R. L. Mabey, outside of Sandy Hook, on the Atlantic ocean; and that afterwards the said steamboat R. L. Mabey was arrested on process issued upon said libellant, was afterwards discharged upon said claimants intervening in said action, and filing their answer and claim, and entering into stipulation; and afterwards your petitioner filed his replication to said answer, and such proceedings were afterwards had in said cause; that on the 17th day of Dec'r, 1856, a final decree was made and pronounced therein by the said district court, wherein it was ordered, adjudged, and decreed that the libel of your petitioner filed as aforesaid be dismissed without costs to either party; and that after such final decree, your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was renewed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court; that afterwards, on the 18th day of September, 1857, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of said circuit court is, as the appellant is advised, erroneous and ought to reversed; wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear said cause anew, and that the said decree of the cir-

cuit court and every part thereof may be reversed, and that a decree made that this appellant recover of said appellees the amount of his damages, as mentioned and prayed for in the libel of the appellant, with costs of appeal, or such other decree as to the said Supreme Court shall seem just.

Dated N. Y., Sept. 22, 1857.

R. STURGIS,
E. C. BENEDICT,
Proc. for Applnt.

Endorsed: U. S. circuit court. Russell Sturgis, liblnt. and applnt. vs. the steam-tug R. L. Mabey, John Clough et al., clmt. and appellee. Appeal. Filed Sept. 22, 1857.

I hereby admit due service of a copy of the within petition of appeal, on this 22 day of Sept., 1857.

D. McMAHON,
Proct. for Appellees.

Circuit of the United States of America, for the southern district of New York, in the second circuit.

RUSSELL STURGIS, liblnt. and applnt., vs. THE STEAMBOAT R. L. MABEY, JOHN CLOUGH, et al., clmt. and appellees. } Bond for costs.

Know all men by these presents, that we, Russell Sturgis and Latimer Bailey, are held and firmly bound unto the above named claimants and appellees, in the sum of five thousand three hundred and twenty-six dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the twenty-second day of Sept., in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, to be held at Washington, in the Dist. of Columbia, to reverse the decree rendered in the above entitled suit, by the judge of the circuit court of the United States, for the southern district of New York, 2 circuit:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

RUSSELL STURGIS, [L. S.]
LATIMER BAILEY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 22 day of Sept., 1857, before me.

GEO. F. BETTS,
U. S. Com.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

Latimer Bailey, being duly sworn, depose and say each for himself, that he resides at No. 163 W. 14 st., in the city of New York; that he is worth the sum of five thousand three hundred and twenty-six dollars, over and above all his just debts and liabilities.

LATIMER BAILEY.

Sworn to this 22 day of Sept., A. D. 1857, before me.

GEO. F. BETTS,
U. S. Com.

I hereby approve of the sufficiency of the sureties to the within bond. Sept. 22, 1857.

SAM. R. BETTS.

Vol. , page . U. S. circuit court. Russell Sturgis, liblnt. and applnt., vs. the s'boat R. L. Mabey, John Clough et al., clmts. and appellees. Bond for costs on appeal. , proctor. Filed this 22 day of Sept., 1857.

By the honorable Samuel R. Betts, one of the judges of the Circuit Court of the United States, for the southern district of New York, in the second circuit.

To JOHN CLOUGH, ROBERT L. MABEY, and HENRY M. WEED:

Whereas Russell Sturgis, libellant and appellant, has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States, for the southern district of New York, second circuit, made in favor of you, the said John Clough, Robert L. Mabey, and Henry M. Weed, against Russel Sturgis, liblnt. and applnt., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern dist. of New York, in the second circuit, the 22 day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

SAM'L R. BETTS. [L. S.]

I hereby admit due service of a copy of the within citation, on the 22 day of Sept., 1857.

D. McMAHON, *Proct. for Appellees.*

2042

Endorsed: U. S. circuit court. Russell Sturgis, liblnt. and applnt., vs. the steam-tug R. L. Mabey, John Clough et al., clmts. and appellees. Citation. Martin & Smith, attys. Filed Sept. 22, 1857.

Supreme Court of the United States.

RUSSELL STURGIS, libellant and appellant,
vs.
JOHN CLOUGH, ROBERT L. MABEY, and Henry M. Weed, claimants of the St. Bt. R. L. Mabey, her tackle, &c. } No. 69.

The answer of the above-named respondents to the petition of appeal of the appellant.

These respondents not confessing or acknowledging all or any of the matters or things to be true as in and by the said petition of appeal are contained and set forth, for answer thereunto say, that they believed to be true that such decree as is complained of by the appellant was made by the district court of the United States for the southern district of New York, and affirmed in the circuit court therein on appeal, as in such petition of appeal is set forth; but as to the date, substance, and contents thereof these respondents crave leave to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree is agreeable to justice and equity, and they therefore pray that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these respondents.

JOHN CLOUGH,
For self and other claimants.

DENNIS MCMAHON,
Proctor for appellees and advocate.

Supreme Court of the United States.

RUSSELL STURGIS, libellant and appellant,
vs.
JOHN CLOUGH, ROBERT L. MABEY, and Henry M. Weed, claimants of the St. Bt. R. L. Mabey, her tackle, &c. } No. 69.

We consent that the record in this cause on file with the clerk of the Supreme Court of the United States be amended so as to correspond with the annexed printed record, with its different emendations in red ink, and with the written decree and the written bill of sale, and answer to petition of appeal, also annexed;

And that an order to the effect aforesaid be entered with the